80-1287

No.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

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INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
Petitioner,

versus

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, Plaintiffs, AND LOFFLAND BROTHERS COMPANY, Third-Party Defendant,
Respondents.

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On Petition for Writ of Certiorari to
The United States Court of Appeals
For the Fifth Circuit

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## PETITION FOR CERTIORARI

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## QUESTIONS PRESENTED

The questions presented by this petition are:

1. Under the existing contracts between Inexco Oil Company and Loffland Brothers Company, the indemnification agreement applies against Loffland Brothers Company and in favor of Inexco Oil Company, contrary to the conclusions reached by the trial court and the Fifth Circuit.

2. Inexco could not be guilty of negligence because there was the contract for drilling oil well by an independent contractor with no supervision by Inexco Oil Company, and if there was failure to hook up the kill line or an error in requesting that the kill line be hooked up without shutting down the rig, all of that was had and done by and under the total supervision of Loffland Brothers Company.

3. Is petitioner entitled to judgment as a matter of law or, in lieu thereof, is it not entitled to have the judgment set aside and held for naught?

4. Did the United States Court of Appeals understand the problem before it for determinition either on direct appeal or on petition for rehearing and for rehearing en banc?

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On Petition for Writ of Certiorari to
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For the Fifth Circuit

# PETITION FOR CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgment herein of the United States Court of Appeals for the Fifth Circuit entered in the above cause on January 12, 1981.

## OPINIONS BELOW

Parties tried this lawsuit before United States District Judge Walter L. Nixon, Jr., in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, without a jury. The opinion of the judge was that witness Riley Dial did not install kill line at beginning of drilling operations at well site involved. The trial judge on page 16 of his opinion (App. p. 24a), which was adopted by the court on appeal, gave as his opinion that "the failure of Inexco to discharge this duty constituted negligence, and this negligence was the sole proximate cause of the plaintiff's injury." What the court held was that he did not believe Riley Dial on oath. If he believed Riley Dial, he would have found for the defendant, Inexco Oil Company. The trial court did not hold that Riley Dial or B. J. Fielder, the substitute toolpusher on the day of the accident, did a willful or negligent act or omission to cause the accident, as provided for in paragraph 11.3 of the Master Rotary Drilling Contract. The opinion of the trial judge, in 27 pages, is attached hereto as Appendix 1 (App. pp. 1a-32a), and copies of the separate judgments in the trial court are attached hereto as Appendix 2 (App. p. 32a-34a) and Appendix 2(a), (App. pp. 35a-37a). When the case reached the Fifth Circuit, greatly expanded in less than a four year period from 12 judges to 27 in number, the Court simply affirmed the trial court by adopting what had been held by the trial judge. Appendix 3 thereto is copy of that

handed down by the appellant court, an adoption of the trial court opinion and judgment, (App. p. 37a-38a).

In order for an understanding to be had of the contractural responsibilities existing between the parties, the Master Rotary Drilling Contract between Inexco Oil Company and Loffland Brothers, dated December 17, 1970, on a footage basis and naming Loffland Brothers Company as an independent contractor, appears hereto as Appendix 4 (App. pp. 39a-42a). The indemnity feature thereof is as follows:

> "11.3 Contractor agrees to protect, indemnify, and save Operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the willful or negligent acts or omissions of Contractor and/or Contractor's agents, employees, representatives, or subcontractors." (App. p. 41a).

For further contractual responsibility of the parties, a copy of the Bid Sheet and Drilling Order dated December 22, 1970, is attached hereto as Appendix 5 (App. p. 43a-47a).

We submit on a reasoned and studied professional judgment that the decision of the Fifth Circuit is con-

trary to other decisions of the United States Court of Appeals for the Fifth Circuit and other Circuits and the Supreme Court of the United States and that uniformity requires a consideration of the whole subject so that justice may be done. In this connection, we cite the case of *Crosby v. General Tire & Rubber Co.*, 543 F.2d 1128, decided by the Fifth Circuit in 1976, and *Ramsey v. Georgia-Pacific Corp. v. Walker Welding and Machine Co., Inc.* (5th Cir. 1979) 597 F.2d 890, with professional judgment that one or more questions of exceptional importance require further consideration of that which we claim was erroneously done by the Fifth Circuit and in contradiction of what was decided by the trial court and by the Fifth Circuit in this case; and that the principle of stare decisis has not been permitted to retain its proper place in the decision of the Fifth Circuit in this case.

## JURISDICTION

Jurisdiction to review the orders and action of said District Court and of said Court of Appeals by writ of certiorari is conferred upon this Honorable Supreme Court under Title 28 U.S.C., Sections 1254(1) and 2010(c) and (f).

## CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND ORDERS INVOLVED

That had and done by the trial court and in the Fifth Circuit violates Section X (See Appendix 7) of the Constitution of the United States and particularly that part

thereof which prohibits the impairment of the obligations of contracts; and the opinion entered is in violation of the due process and equal protection clauses of the Fourteenth Amendment (See Appendix 8) to the Constitution of the United States; and there are involved conclusions by the District Court contrary to the decisions of the Supreme Court of Mississippi as related to negligence and primary responsibility which control since the case of *Erie Railroad v. Tompkins*, 82 L.Ed. 1188.

## STATEMENT OF THE CASE

### (A) Jurisdiction

In the United States District Court, jurisdiction was based upon diversity of citizenship existing between the respondents, all Mississippians, and Inexco Oil Company, a non-resident corporation, under authority of Title 28 U.S.C., Section 1332.

### (B) Pleadings and Proceedings

The District Court and the Fifth Circuit panel of judges, following by adoption, concluded that witness Riley Dial, who was in charge of the drilling operations, did not install the kill line at the beginning of the drilling operations. They disbelieved Riley Dial, toolpusher, on oath. The trial court and the Fifth Circuit had to conclude that Riley Dial, toolpusher from the be-

ginning of the drilling operations to the day of the accident, and B. J. Fielder, toolpusher on the day of the accident, could not be believed on oath; and the trial court simply held, which was adopted by the Fifth Circuit, that under the pleadings and proof, the sole cause of the accident was the failure to hook up the kill line at the beginning of the drilling operations.

The pleadings for the petitioner here disclose that Loffland Brothers Company was an independent contractor and that there was a contract where Inexco Oil Company paid Loffland Brothers Company on a footage basis and was, therefore, not interested in details of doing the work but only in the ultimate result and that Loffland Brothers Company was a reputable drilling contractor. In fact, Riley Dial with this very equipment was user of that equipment for a period of approximately 18 years and B. J. Fielder, the other toolpusher, knew the equipment and was the exchange toolpusher for the day of the accident. Both of them, as per pleadings, were responsible and capable employees of Loffland Brothers Company, but this was not believed by either court.

When the Fifth Circuit adopted the findings and judgment of the trial court, there was great concern that the Fifth Circuit panel of judges would follow the findings of the District Court without understanding the entire record; and we did file petition for rehearing and for rehearing en banc, but apparently no consideration was given thereto as disclosed through

notice from the Fifth Circuit dated January 12, 1981, appearing as Appendix 6 hereto (App. pp. 48a-49a).

### (C) Statement of Facts

There is no dispute but that Inexco Oil Company had a lease from Masonite Corporation on acreage to justify drilling of the two oil wells. The first was Masonite No. 1 which was completed or produced under contract by Loffland Brothers Company as an independent contractor; and then Loffland Brothers Company moved to the new location, Masonite No. 2, where this accident occurred and set up its own drilling rig and began the drilling which continued for a period of 26 days when the accident occurred. The plaintiff, Nevel A. Walters, did not begin as an employee of Loffland Brothers Company until sometime after the well was spudded in and drilling was begun. The accident occurred when the well was approximately 12,000 feet in depth. The only positive proof was of Riley Dial that he was in charge of the drilling location and did install the kill line at the beginning of the drilling operations. The trial court held that he did not believe Riley Dial on oath and he had to disbelieve B. J. Fielder, both employees of Loffland Brothers Company.

If there be fault or failure of anyone, the indemnity contractor, Loffland Brothers Company, would have been that one because Riley Dial and B. J. Fielder, toolpushers for Loffland Brothers Company in the drilling

under the independent contract, were the active persons.

The contentions made by Inexco Oil Company in the trial court and on appeal have been that it cannot be liable in this case because there was the contract and at a depth of 12,000 feet the toolpusher, B. J. Fielder, caused the plaintiff Walters and his co-worker Smith to install the kill line while drilling was in progress. This was not done by Inexco Oil Company. No one so claims, and there is nothing in the record to the contrary, that any representative or employee of Inexco Oil Company was on the job when the accident occurred.

The trial court and thus the court on appeal did not hold that Riley Dial or B. J. Fielder did a willful act or omission to cause the accident as provided for in paragraph 11.3 of the Master Rotary Drilling Contract, (App. p. 41a). It was surely a willful act of B. J. Fielder to order the kill line to be installed or hooked to the standpipe by Walters and Smith while drilling was in progress. Had B. J. Fielder not ordered this done, there would have been no accident. What other interpretation could be given to the verbiage of the indemnity paragraph of the contract.

*Life Expectancy Application*

We only beg of the Court that consideration be given to the indemnity feature of the contract and to the question of liability and whose negligence was respon-

sible for that which occurred. The life expectancy table had no application because Walters had physical problems and thus it was erroneously used by the trial court in his calculations. We did want to again make reference to that which we have sought to assert and quote from the opinion of the trial court as follows:

> "Furthermore, the plaintiff will suffer future loss of gross earnings during his work life expectancy of 22.3 years from the date of trial in the amount of $220,353.43, which discounted to its present value using a discount rate of 5% yields a figure of $131,034.20." (App. p. 26a).

*Third-Party Complaint*

This statement of facts is limited to issues which are germane and controlling and require either a judgment against the respondent Walters and his wife or that if recovery be had, same shall be the obligation of Loffland Brothers Company, named as third-party defendant. The trial court held that Loffland was not guilty of negligence. He did not hold that any agent of Loffland Brothers Company was guilty of any willful conduct to cause or contribute to the accident. It was either a willful act or negligence for B. J. Fielder to order the plaintiff and another to install the kill line to the standpipe with the drilling in progress at the time. We must call to the attention of the Court certain parts

of the Bid Sheet and Drilling Order, (App. pp. 43a & 45a) and the Master Rotary Drilling Contract (App. pp. 39a-42a), as follows:

*Bid Sheet and Drilling Order*
*(Dated 12-22-70)*

> "3. Depth: Subject to the right of Operator to abandon the well or to have the well completed at a lesser depth Contractor agrees to drill the well to a total contract depth of 15,000 feet. Contractor will drill the well on a footage contract basis (See Section 13a hereof)."

Paragraph 4 of said Bid Sheet and Drilling Order provides that contractor shall furnish certain equipment in use on its Rig No. 328, including "Blow-out Preventers — Power Actuated: Hydril, pipe and blind rams."

> "13. Compensation to be paid Contractor: (a) For work performed on a footage basis, the sum of $8.50 per foot for each linear foot of hole drilled."

*Master Rotary Drilling Contract*
*(Dated 12-17-70)*

We quote from applicable paragraphs in the contract proper so same will be squarely before the Court, as follows:

"1.2 If and when a Drilling Order has been executed by the parties hereto, Contractor agrees to commence operations for drilling of the well at the time and on the date set forth in Section 2 of the Drilling Order, and to drill and complete the well covered thereby for the production of oil and/or gas, at the location, in the manner, to the depth, and in accordance with all the provisions and specifications of this agreement and the Drilling Order."

"2.2 All labor, equipment, material, supplies and services necessary to the proper operation or maintenance for the drilling rig shall be furnished by Contractor. * * *"

"3.2 For work performed on a footage basis, Contractor shall be paid the rate agreed upon and specified in Section 13a of the Drilling Order multiplied by the linear footage of hole drilled. * * *"

"3.6 If loss of circulation occurs while operations are being conducted on a footage basis, all operations until circulation is restored are to be conducted in accordance with the provisions set forth in Section 14 of the Drilling Order."

"7.2 Contractor shall run and cement all strings of casing and shall be compensated therefore either at footage rates or day work

rates as set out in the Drilling Order. If casing is run and cemented at Footage rates, Contractor shall at its expense condition the hole; run and cement the casing; wait on cement to harden (with prescribed waiting time to commence when plug hits bottom); drill the plug; wash the hole; and withdraw the bit. * * *"

"8.2 Contractor agrees to maintain well control equipment in good operating condition at all times, checking it as prescribed in Section 4 of the Drilling Order, and shall use all reasonable means to control and prevent fires and blowouts, to protect the hole, and to protect Operator's equipment."

"9.1 Contractor agrees to take cores as set out in Section 9 of the Drilling Order and, in so doing, to utilize the type of equipment specified therein. All coring shall be paid for at the applicable day work rate unless otherwise specified in the Drilling Order."

"10.2 Contractor shall report to Operator as soon as practicable all accidents or occurrences resulting in injuries to Contractor's employees or third parties, or damage to property of third parties, arising out of or during the course of operations of Contractor."

"11.3 Contractor agrees to *protect, indemnify, and save Operator harmless from and against all*

*claims*, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the *willful or negligent acts or omissions of Contractor and/or Contractor's agents*, employees, representatives, or subcontractors." (Emphasis Ours)

"12.4 Before payments are made by Operator to Contractor, Operator may require Contractor to furnish proof that there are no unsatisfied claims for labor, materials, equipment and supplies, or for injuries to persons or property not covered by insurance."

"14.1 Contractor shall be an independent contractor with respect to performance of all work hereunder and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of Operator in the performance of any work or service or any part thereof in any manner dealt with hereunder. Operator shall have no direction or control of Contractor or its employees and agents except in the results to be obtained. * * *"

"14.2 The actual performance and superintendence of all work hereunder shall be by Contractor, but Operator or its representa-

tives shall have unlimited access to the premises to determine whether work is being performed by Contractor in accordance with all of the provisions of this contract and the Drilling Order."

"15.1 Contractor and Operator respectively agree to comply with all laws, rules and regulations, federal, state, and municipal, which are now or may become applicable to operations covered by this agreement or arising out of the performance of such operations."

## ARGUMENT

The Fifth Circuit adopted the opinion of the trial judge (App. p. 38a). The Court below did not believe the testimony of Riley Dial. It may be that, with this conclusion, the Court could ignore the "passive-active" theory of implied indemnification because the Mississippi Workmen's Compensation Act through Section 71-3-9 of the *Mississippi Code of 1972* provides that the exclusive remedy is under said Act. However, B. J. Fielder, who substituted for Riley Dial on the day of the accident, did cause plaintiff to do the work on the kill line while the drilling continued. The place was perfectly safe until it was made unsafe by an employee of Loffland Brothers. It was not customary for the owner to have someone on the premises when the contract was on a footage basis as here. If Riley Dial failed to

hook up the kill line while the drilling machinery was in progress, this was willful or active negligence by Loffland's employees. This was solely responsible for that which occurred. No recovery can be had against Inexco Oil Company because it has done nothing and solely depended on the independent contractor, Loffland Brothers Company, to do the work. Inexco had no persons present when the accident occurred. Inexco had nothing to do with creating an unsafe place to work. Inexco had nothing to do with the hooking up of the kill line. That was done solely by employees of Loffland Brothers Company.

### 1. Different Conclusions Have Been Reached By The Fifth Circuit On The Same General Facts.

Under the authority of *Ramsey v. Georgia-Pacific Corp. v. Walker Welding and Machine Co., Inc.*, third-party defendant, (5th Cir. 1979) 597 F.2d 890, a different conclusion on same facts was reached in interpretation of contract. It is true that Section 35-5-41 of the *Mississippi Code of 1972* did on July 1, 1972, eliminate the type of indemnity contracts existing in Mississippi prior to the 1972 Act. In the *Ramsey* case Circuit Judge Roney identified the existing contracts and indemnity and recognized that in the case of *Crosby v. General Tire & Rubber Co.*, 543 F.2d 1128, the Fifth Circuit in 1976 had concluded that General Tire & Rubber Company would have been entitled to protection except that its contract was four years after the enactment of Section 35-

5-41, with recognition that prior to 1972 contracts were upheld and enforced in Mississippi even against one's own negligence. In order to be properly understood in the premises, we quote from the Master Rotary Drilling Contract, (App. pp. 39a-42a), which provides as follows:

> "15.1 Contractor and Operator respectively agree to comply with all laws, rules and regulations, federal, state, and municipal, which are now or may become applicable to operations covered by this agreement or arising out of the performance of such operations." (App. p. 42a).

The Master Rotary Drilling Contract between Inexco Oil Company and Loffland Brothers Company, dated December 17, 1970, further provides as follows:

> "11.3 Contractor agrees to protect, indemnify, and save Operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the willful or negligent acts or omissions of Contractor and/or Contractor's agents, employees, representatives, or subcontractors." (App. p. 41a).

The trial court in the case being presented on petition quoted from the case of *Mississippi Power Company v. Brooks,* (Miss.) 309 So.2d 863, which supports the theory we have sought to present that Inexco Oil Company had no one on the job at the time and was not active in any kind of way which brought about the accident. That was done by B. J. Fielder, and the trial court in the *Brooks* case said of this:

> "Since this was done by Brooks' employer, an independent contractor who had full control over the mode and manner of constructing the boiler and its components, MPC had no duty to make the structure actually built by such independent contractor safe for the independent contractor or its employees and had no corresponding duty to warn of any hazard in connection therewith." *Mississippi Power Company v. Brooks,* supra.

The trial court also cited the case of *Ingalls Shipbuilding Corp. v. McDougald,* (Miss.) 228 So.2d 365, and there the court held that:

> "Ordinarily a prime contractor is not liable for the torts of an independent contractor or of the latter's servants committed in the performance of the contracted work. This is based on the theory that the contractee does not possess the power of controlling the per-

son employed as to the details of the work." *Ingalls Shipbuilding Corp. v. McDougald,* supra.

## 2. The Trial Court And Court On Appeal Denied Obligation Of The Contract.

The Master Rotary Drilling Contract involved in this case was executed in 1970 and the attempt to apply said Section 35-5-41 of the *Mississippi Code of 1972,* which became effective in July of 1972, would be in contradiction of the existing contract. The 1972 Act changing the law in Mississippi has no application to the rights of the parties in this action.

Section 16 of the *Mississippi Constitution of 1890* provides as follows:

> "Ex Post facto laws, or laws impairing the obligations of contracts, shall not be passed." *Mississippi Constitution of 1890,* Art. 3, Sec. 16.
>
> "If a contract when made was valid by the laws of the state as then expounded and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of legislation, or decision of its courts altering the construction of the law.' " *Wisconsin Lumber Company v. State,* (Miss.) 54 So. 247.

It should be stated that the Fifth Circuit has reversed the trial judge in a very similar situation as here

involved, and thus the lack of uniformity of decisions in the Fifth Circuit. As related to the indemnity feature, we rely on the *Ramsey* case where Circuit Judge Roney, in reversing Judge Walter L. Nixon, Jr., stated as follows:

> "A Walker Welding employee attached a chain belonging to the Walker Welding to the end of the conveyor and to the lifting hook of a 'cherry picker' crane provided by Georgia-Pacific and operated by a Georgia-Pacific employee. The Georgia-Pacific employee lifted the conveyor at the instruction of a Walker Welding employee. While plaintiff, a Walker Welding employee, was under the conveyor, the chain failed and the conveyor fell and injured him. Plaintiff received Workmen's Compensation benefits from the insurance carrier for Walker Welding." *Ramsey v. Georgia-Pacific Corp.*, supra.

Judge Roney held that the "passive-active" theory of indemnification was made unavailable to Georgia-Pacific as a passive wrongdoer in view of the fact that the Mississippi Workmen's Compensation Act provided through the law involved that said Act was an exclusive remedy as between the employer and employee.

In addition, Circuit Judge Roney stated in the *Ramsey* case the following:

"Second, it appears clear that by the indemnity provision of this contract the parties intended that Walker Welding would be responsible for any damages Georgia-Pacific incurred because of Walker Welding's negligence. There is no reason to assume that on proper interrogatories the jury could not determine by percentage how much each tortfeasor's negligence contributed to the total." *Ramsey v. Georgia-Pacific Corp.*, supra.

The Fifth Circuit further recognized that there was nothing in the Mississippi law to bar such a contractual arrangement. This efficient Fifth Circuit Judge recognized the case of *Crosby v. General Tire & Rubber Co.*, (5th Cir. 1976) 543 F.2d 1128, as authority in this area of concern.

We quote again from the *Ramsey* case as follows:

"The indemnity agreement here is clearly not so straightforward and seems to us to be impliedly, if not expressly, an agreement between the parties that Walker Welding will be responsible for its own conduct. In venturing beyond the boundaries of *Crosby*, we have found no decision of the Mississippi courts construing or applying §31-5-41 which might direct us.

"We reach the conclusion that summary judgment should not have been granted on

> this point because (1) the contract seems to contemplate that Walker Welding would be solely responsible for the work so the parties would be protecting Georgia-Pacific against Walker Welding activity in this regard; (2) Mississippi law does not foreclose such an agreement; (3) were it not for the insulating factor of workmen's compensation, Mississippi law itself would provide for a passive-active wrongdoers shifting of liability. Home Insurance Co. of N.Y. v. Atlas Manufacturing Co., supra." *Ramsey v. Georgia-Pacific Corp.*, supra.

The foregoing represents our notion of what has been held in the *Ramsey* case and in the *Crosby* case, but we do think that this authority supports our view that Loffland Brothers Company would be required under this applicable law to stand between Inexco Oil Company and loss, just as was held in favor of Georgia-Pacific Corporation in the *Ramsey* case.

Our simple contention is that if the opinion of the Court in the case now before it is to determine the rights of the parties, then there is a conflict between the holdings of the court in different cases in the Fifth Circuit. Surely a different conclusion was reached in the *Ramsey* and *Crosby* cases than reached by the trial court here with per curiam affirmance in adoption of the trial court's memorandum opinion. In the *Crosby* case, the Fifth Circuit concluded on appeal that the indemnity even against one's own negligence would

apply in Mississippi except for the advent of the new statute which came into effect in Mississippi on July 1, 1972, and which statute provides specifically that one cannot contract against his own negligence. Such was not the law prior to July 1, 1972, and any conclusion reached to the contrary would be permitting by legislation the impairment of obligation of a contract, as we have heretofore mentioned with case law cited to support that contention.

It has been disturbing to the writer hereof that we could use a witness in the trial court who was listed as a "may call" witness for the trial to be a false witness when we knew nothing about him until he was listed in the pretrial order of the plaintiff. We do not think that the authorities cited by Judge Walter L. Nixon, Jr., have any kind of application whatsoever to this action. We would hope that stare decisis would penetrate the whole of this lawsuit and that there would be no so-called judicial legislation. As we grow older in the profession, we must recognize change; but we do not think that we should eliminate stare decisis in the determination of case law generally. An effort has been made to try to decide how Judge Nixon could have ever reached the conclusion reached by him. He had to disbelieve Riley Dial and B. J. Fielder in order to find for Walters. If Riley Dial and B. J. Fielder were telling the truth, there could be no recovery unless it be possible in the law to reach conclusions from general facts on principles given as a starting point through reasoning and speculative inferences. The truth was obtained from

Riley Dial through the use of another beyond criticism as to integrity. Riley Dial was working for another and we had to pay him and his employer a substantial amount of money to get him to come to court. When he came to court, we asked him to tell the truth. We had no desire to cause falsehoods to be a part of the litigation. It comes as an everlasting shock that one can listen to another and eliminate entirely his statement coming from the witness stand.

If we are in error in the foregoing, then we must go back to the *Ramsey* case. The Court of Appeals, through Judge Roney, in the general statement held:

> "* * * (1) principal would not be liable to employee for any damages absent some negligence on part of principal inasmuch as no vicarious liability for acts of independent contractor existed under Mississippi law; (2) passive-active theory of implied indemnification was unavailable to principal as passive wrongdoer against contractor as active wrongdoer by reason of exclusive remedy provisions of Mississippi Workmen's Compensation Act; (3) summary judgment should not have been granted where contract between principal and contractor seemed to contemplate that contractor was solely responsible for work so that by indemnification agreement parties would be protecting principal against activity of contractor, Mississippi law did not foreclose such

an agreement and were it not for factor of workmen's compensation Mississippi law would provide for passive-active wrongdoer's shifting of liability of contractor." *Ramsey v. Georgia-Pacific Corp.*, supra.

## CONCLUSION

In the foregoing we have sought to disclose that constitutional due process and equal protection of the law require conclusion that Inexco Oil Company is not liable to the plaintiff Walters for any sum whatsoever; but if mistaken in this, then and in that event, under the indemnity agreement Loffland Brothers Company must stand between Inexco Oil Company and loss.

Respectfully submitted,

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FOR PETITIONER

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## CERTIFICATE

Three true copies of the foregoing Petition for Writ of Certiorari have been mailed postage prepaid, to Hon. Leonard B. Melvin, Jr., Attorney for Respondent Walters, Post Office Box 142, Laurel, Mississippi 39440, and to Hon. Bruce C. Aultman, Attorney for Respondent Loffland Brothers Company, Post Office Box 750, Hattiesburg, Mississippi 39401, on this ____ day of January, A.D., 1981.

M. M. ROBERTS
OF ATTORNEYS FOR
PETITIONER

## APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

NEVEL A. WALTERS,
Plaintiff,

versus C.A. No. H77-0021(N)

INEXCO OIL COMPANY,
Defendant and
Third-Party Plaintiff,

versus

LOFFLAND BROTHERS COMPANY,
Third-Party
Defendant.

* * * CONSOLIDATED WITH * * *

MRS. DELPHIA WALTERS,
Plaintiff,

versus C.A. No. H77-0022(R)

INEXCO OIL COMPANY,
Defendant and
Third-Party Plaintiff,

versus

LOFFLAND BROTHERS COMPANY,
Third-Party
Defendant.

Dated: April 26, 1979

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*MEMORANDUM OPINION*

These consolidated diversity actions were filed by the plaintiffs, Nevel A. Walters and his wife, Mrs. Delphia Walters, both resident citizens of the State of Mississippi, against Inexco Oil Company, a foreign corporation, to recover damages for personal injuries sustained by Mr. Walters as a result of an explosion which occurred in the course of his employment with Loffland Brothers Company while drilling an oil well for Inexco Company. The Complaint of Mrs. Delphia Walters seeks to recover for loss of consortium caused by the personal injuries suffered by her husband as a result of the explosion. The plaintiffs charge that Inexco is liable to them because of its negligence in failing to furnish Walters a safe place to work and in failing to properly install, test and inspect the "kill" line, a safety device which is attached to the well to control well explosions caused by subterranean pressure. Inexco has filed a general denial of the allegations of the Complaint and has filed a Third Party Complaint against Loffland Brothers Company alleging that under the Master Rotary Drilling Contract executed by

Inexco and Loffland, Loffland has agreed to be responsible for all liability occurred in the course of the drilling operation, and to stand between Inexco and any loss and that any negligent actions complained of were those of Loffland Brothers.

The case was tried before the Court without a jury, and based upon all the evidence of record, the pretrial order, pleadings and proposed findings of fact and conclusions of law and memoranda of authority submitted by the parties, this Court makes the following findings of fact and reaches the following conclusions of law.

## Findings of Fact

At the outset the Court notes that this trial revolved around the business relationships and terminology which are indigenous to the oil production industry, and an explanation and description will be helpful. The person or business that actually drills the oil well is called the contractor, and his responsibility, subject to terms of the contract he enters into and government regulations, as will be revealed below, is to drill the well to the depth specified in the contract and hopefully at that point to bring the well into a producing status. The person or organization who owns or has control of the mineral rights sought to be exploited by the well is called the operator, and again subject to the contract terms and government regulations, the operator has certain obligations to fulfill in drilling the well, most notably

insofar as this case is concerned, the duty to require that safety precautions be taken on the job site. In this case the operator was the defendant Inexco Oil Company, and Inexco had signed a contract with Loffland as operator under which Loffland would drill the well in question for Inexco.

The crew which actually handles the drilling rig, in this case all Loffland employees, is made up of six men. The man in charge is called the tool pusher, and on the day of the accident the regular tool pusher, named Riley Dials, was not present at the job site and a substitute tool pusher, Bobby J. Fielder, was in charge. The man immediately subordinate to the tool pusher is called the driller, who on this job was Clyde Denson. He was in immediate control of the four roughnecks or manual laborers on the drilling operation. In addition to the plaintiff Walters, the other roughnecks were Joe Roberts, Thomas J. Smith, and a man who was identified only as Frenchie.

On February 26, 1971, Walters was working as a roughneck for Loffland Brothers on a drilling rig owned by Loffland and engaged in drilling a well on an Inexco lease at Masonite Well No. 2 in the Prairie Branch Field in Clarke County, Mississippi. It was raining on the day in question and Walters was putting on his rain slicker in the early morning when he saw a man whom the crew had come to identify as a representative of Inexco (referred to by the witness as "the Inexco man") talking to Bobby Fielder, the tool pusher on that day.

Walters was close enough to the Inexco man and Fielder to hear the Inexco man tell Fielder to have the crew hook up the kill line, which, as will be discussed in detail below, is a safety device designed to aid in controlling the danger of explosion caused by subterranean pressure exerted by oil and gas seeking escape to the surface. After the Inexco man told Fielder to have the kill line connected, the driller, Clyde Denson, came to Walters and Thomas J. Smith and told them to attach the kill line.

When the drilling of an oil well is started after the rig is set up, one of the first steps is to drill a hole and insert a large pipe called the surface casing to protect the sides of the hole from caving in, to prevent fresh water and sand seepage, allow the operator to build up mud weight, and to allow drilling to the desired depth. The size of the surface casing, and the depth to which it will extend are controlled by the agreement between the contractor and the operator, which is embodied in the "Bid Sheet and Drilling Order." In this well a surface casing of 10¾ inches diameter was called for, to extend to a depth of approximately 3500 feet. After the surface casing has been installed, concrete is pumped under pressure into the surface casing and is under such pressure that it then comes back up on the outside of the surface casing, between the large pipe and the ground, until the concrete reaches the surface. The concrete is then allowed to set or harden for a period of time determined by the operator in order that the surface casing might be secured in the hole to allow fur-

ther drilling to proceed. The well head is welded to the top of the surface casing, and safety devices called blow-out preventers are attached to the top of the well head. Since more than one of these can be used, it is common to refer to the blow-out preventer "stack." This well had two blow-out preventers, a high and a low blow-out preventer, with the former located approximately 40" above the ground. Of course all the well head/blow-out preventer stack are below the drilling platform floor, which is located several feet above the blow-out preventers. Between the two blow-out preventers there is a valve to which the "kill line" is to be attached. Through the kill line, when attached to the blow-out preventer assembly, can be pumped drilling fluid, commonly mud, from there down into the hole to subdue well pressure caused by oil and gas. The connection to which the kill line is attached is the stand pipe.

Pursuant to Denson's instructions, Smith and Walters went under the rig floor to connect the kill line, and according to Smith, Walters was fitting a Stilson wrench to the valve when the valve blew out of the stand pipe, the force of the explosion hurling the plaintiff out from under the rig substructure and into the drilling line spool. The drilling mud which spewed out as a result of the explosion almost drowned the plaintiff, and he was severely and permanently injured. Walters did nothing to precipitate this explosion in any manner. As quickly as possible, the plaintiff was placed

in the back seat of a car and Fielder and Smith drove him 20 miles to the Jones County Community Hospital for emergency treatment.

There was a factual dispute at the trial over whether a representative from Inexco had been to the well site on the day of the accident and talked to the tool pusher. As noted above, Walters testified that he had seen the "Inexco man" at the well site several times prior to the accident, as well as on the day of the accident, and was able to identify this person as an Inexco employee by the fact that he drove a car with an Inexco emblem on its door. Walters did not know this man's name, but described him as short and heavy set, and noted that he never wore a safety hat. Walters said he had seen the Inexco man at the well site at least four times, and as noted above, it was this man who told the tool pusher to have the kill line connected.

Joe Roberts, another of the roughnecks on the crew, said he had seen the Inexco man at another well site driving a car with an Inexco emblem on the side, and had seen this Inexco man three or four different times walking around the well site where the accident occurred. Roberts stated that the Inexco man had been at the well site on the day of the accident, that it was the same Inexco man he had seen at the other site, and that on the day in question this man talked to the tool pusher, though Roberts did not hear what was said. Roberts did hear the driller tell Smith and Walters to con-

nect the kill line, as they were all standing on the floor of the drilling line at the time.

Smith testified that the Inexco man had come out to the well site three or four times in the company car with the Inexco emblem on the side, but that he had never heard the man's name. Smith saw the Inexco man at the well site on the day of the accident talking to the tool pusher, but did not hear any of the conversation.

On the other hand Bobby Fielder, the tool pusher on the day in question, stated in his deposition that no representative from Inexco had been at the well site on the day of the accident, but since this had been Fielder's first day as the tool pusher on this rig, there was no way Fielder could say whether or not the Inexco man had been there on previous occasions in a company car. The representatives of Inexco stated that when the well was being drilled on a footage basis, as it was at the time of the accident, Inexco would not have any supervisory personnel on the job site, and if there were such people those people would not have any right to direct Loffland's conduct of the drilling operation. In addition the regular tool pusher, Milton Riley Dial, testified that he had never seen any Inexco personnel at the site in company cars, and the Inexco representative testified that there were no such company cars in the area at this time.

This Court acknowledges that it is difficult to ascertain precisely what occurred when faced with such conflicting testimony. However, the Court having heard and considered the testimony of the various witnesses and observed their demeanor while testifying, and having considered the depositions offered into evidence, is of the opinion that the testimony of Walters, Smith and Roberts presented the more accurate account of the events which transpired in relation to the presence of the Inexco man at the well site. Therefore we find as a fact that the Inexco man had been in the area in a company car with the Inexco emblem on the side prior to the accident, that he was at the well site on the day of the accident, and that Walters and Smith undertook to connect the kill line because he had directed the tool pusher to have this done.

The agreement between Inexco and Loffland for Loffland to drill this well is reflected by the Master Rotary Drilling Contract executed by these parties (Exhibit P-3), and the Bid Sheet and Drilling Order (Exhibit P-6). This latter document is a proposal by Inexco to Loffland, which was accepted by Loffland, embodying the manner in which Inexco wishes Loffland to drill the well, and it contains a number of technical requirements that each party must meet and supplements the Master Rotary Drilling Contract in setting out the parties' rights and responsibilities.

The relationship of these two documents was examined by the expert witness for the plaintiff, Paul Mont-

gomery, a petroleum engineer who had supervised the drilling and completion of over 200 oil wells and was extremely knowledgeable in the area of oil well drilling contracts and procedures. Under these agreements Loffland was to furnish the drilling rig, the crew to man the drilling rig, certain equipment, handle all maintenance of the rig, and drill the well to a specified depth. The operator, Inexco, was obligated to furnish certain materials, the location for the rig, the drilling mud, chemicals and additives, the surface casing and cement, and the well head. In addition, the operator was also obligated to obtain all the permits from the Mississippi State Oil and Gas Board. The depth of the surface casing and size of the pipe to be used were to be designated by the operator, who did so, as reflected in its application for a permit to drill filed with the Mississippi State Oil and Gas Board. Inexco also had the right to and did determine the amount of cement to be used in setting the surface casing, and how long this cement should be allowed to set.

Once the surface casing had been cemented in place, the well operator, as noted above, was responsible for providing a well head, although the contractor performed the actual labor of welding the well head in place. At that point the blow-out preventers were installed, as they have flanged edges which mate the flange on the upper part of the well head. The specifications for this well called for 10 inch blow-out preventers, Series 900, to be tested when installed to 2000 psi working pressure.

The operator, in this case Inexco, who obtained the permits from the Mississippi Oil and Gas Board was responsible for installing and testing the blow-out preventers, although again it was the roughnecks who worked for Loffland who were to perform the actual physical labor. Likewise, the operator was responsible for testing the surface casing to insure that there were no leaks and that the blow-out preventers were properly installed. The operator is also required to set and supervisr the mud program, a procedure which will be explained further, and to supply the mud, the chemicals and other additives therefor. The operator was to determine the type of record keeping to be maintained of the well's progress, and to determine when the well reached the desired depth. The operator generally has knowledgeable engineers and geologists available to make these decisions.

Most importantly, as far as this action is concerned, the custom and practice in the oil industry is for the operator to have the responsibility for setting up the blow-out preventer system, including the installation of the kill line prior to commencement of drilling, since that is an integral part of the blow-out prevention system. It is then the operator's responsibilities to perform and supervise the testing of the blow-out preventers, the kill line and the other safety devices, which are all attached to the surface casing and well head. Only after the operator is satisfied that the blow-out preventers, kill line and related safety equipment have been tested to the desired pressure, also determined by

the operator, does the operator then give the contractor permission to drill through the cement which has plugged the bottom of the surface casing.

In light of these facts, reinforced by Mr. Montgomery's experience and testimony, and the testimony of the roughnecks — all of whom were experienced oil field hands — as well as in accordance with the terms and conditions of the drilling contracts, this Court finds that Inexco had the responsibility of installing, testing and inspecting the blow-out preventers and related safety equipment, including the kill line. Inexco had the responsibility of testing these blow-out preventers, including the kill line, to the designated pressure of 2000 psi at the time the blow-out preventers were installed, and this should have been done before Inexco authorized Loffland to drill through the cement plug and out of the surface casing, which was the only safe time to perform this testing. The Court finds that only by performing these duties could Inexco be certain it was turning over to the Loffland crew a safe place to work. This duty on Inexco's part is further established by Rule 13 of the Oil and Gas Regulations which states that in high pressure areas, such as the one in question, "all proper and necessary precautions shall be taken for keeping the well under control, including the use of blow-out preventers and high pressure fittings attached to properly anchored and cemented casing strings." Since Inexco applied for and was granted a permit for drilling the subject well (Ex-

hibit P-17), it thereby agreed to abide by the rules and regulations of the Oil and Gas Board. Section 15 of the Master Rotary Drilling Contract also obligates both Inexco and Loffland to comply with all laws, rules and regulations whether federal, state or municipal, which might apply to the drilling operation.

The kill line is part of the drilling rig and thus belonged to Loffland, and is carried from drilling project to drilling project in a compartment under the rig floor. As stated above, the operator is responsible for seeing that the kill line is attached to the blow-out preventers prior to drilling out of the surface casing, and the key issue before the Court is why this was not done, or if it was done, as claimed by Inexco, why the line was not attached on the day of the accident. Roberts was present when the surface casing was set and the blow-out preventers tested, but he said the kill line was not tested, and Smith did not know whether the kill line had been tested. However all of the witnesses with oil field experience agreed that hooking up and testing the kill line was a very important safety measure. No representative of the operator was present when whatever testing of the safety devices was actually performed, although a representative of Inexco was there when the surface casing was set and cemented.

The regular tool pusher on the job, Riley Dial, was present when whatever testing was done was performed prior to the commencement of drilling and he stated that the kill line was attached and tested at the

time the blow-out preventers were installed. According to Dial, the blow-out preventer was subsequently disconnected from the blow-out preventer because the kill line became plugged up. Dial said he meant to clean it out and put it back on the blow-out preventer, but never did so. However the Court declines to accept this explanation of the events leading up to explosion, and finds that the kill line was never hooked up prior to the explosion. This same witness said that there had been no experience with kicking at this well and that the area was a low pressure area, although every other witness testified that this was a high pressure area, and the roughnecks all stated that the well had been kicking for some time previous to the explosion, requiring large quantities of drilling mud to control it. This is confirmed by the reports of the mud program. However, there is no indication in any of the logs maintained of the drilling operation of the removal of the kill line, nor did any of the roughnecks who testified have any knowledge of this occurance. When Walters and Smith went under the rig floor to attach the kill line on the day of the accident, they found the line coiled up in the bracket or rack used to carry the kill line from one drilling site to another. No witness testified that he had seen the kill line attached, and no roughneck testified that he had participated in the hooking up of the kill line at the beginning of the drilling. It is highly significant that the party charged with making sure that this kill line was attached and tested, Inexco, could offer no testimony on whether the line had actually been attached prior to starting drilling. Even Dial testified that no represen-

tative of Inexco had been at the well site when whatever testing of the safety systems actually performed was carried out. Smith testified that he had noticed that the kill line was not hooked up and had wondered about it, since this was unusual. The undisputed proof of the haphazard manner in which Inexco pursued its safety responsibilities at this well leaves no doubt in the Court's mind that this kill line was never attached prior to drilling, and the Court so finds as a fact.

The need for the kill line was especially present in this particular oil field, since it was a high pressure area and contained poisonous gas, that is, the oil and the gas at the bottom of the well were under extreme pressure, and therefore was seeking relief by coming up the well bore. This is readily apparent by the fact the well had been "kicking" for some days previous to the accident, or as the roughnecks put it, the well was "trying to come in." In order to control this upward pressure by the petroleum product in the ground, the crew had been mixing quite a bit of mud. In this procedure drilling mud is mixed with other chemical additives to be pumped down the well in order that the weight of the mixture might keep the oil and gas down in the well. Whenever the product at the bottom of the well exerts an upward movement on the mass of drilling mud in the well a "kick" takes place. The purpose of the kill line is to control the flow of the well or "kill" the well if it kicks too much and threatens to burst out of control, since on some kicks the drill pipe will clog, in which

event the only way to pump in mud would be through the kill line. If the well were to blow, that is if the upward pressure of the oil and gas were to overcome the weight of the drilling mud, then the blow-out preventers would close and drilling mud would be pumped through the kill line.

The records of the mud program carried out at this well were examined by the expert witness Mc.. gomery, and the quantity of mud used left no doubt in the witness's mind that the well had been kicking prior to the accident. This testimony was confirmed by the testimony of the roughnecks themselves, who all testified that the well had been kicking prior to the accident and that they had carried large quantities of mud in an effort to control this pressure.

*DAMAGES*

There is no doubt that the plaintiff Nevel Walters suffered a devastating injury as a result of this explosion. He testified that he almost drowned from the mud thrown out by the explosion and that his leg was on top of his shoulder. He was rushed to the Jones County Community Hospital for emergency treatment on the day of the accident, and was confined therein until April 2, 1971. Subsequently, he was in the Jones County Community Hospital from April 8, 1971 through April 10, 1971; from April 19, 1971 until May 3, 1971; from May 12, 1971 through May 15, 1971; and from June 21, 1971 through June 23, 1971. He was hospitalized in the Forrest County General Hospital from

August 13, 1971 through September 23, 1971; from September 13, 1972 until September 15, 1972; from January 21, 1973 through February 8, 1973; and from November 26, 1973 until February 8, 1974. Walters entered the University Hospital in Jackson, Mississippi on March 27, 1974, and stayed through April 12, 1974, and he was confined in St. Dominic's Hospital in Jackson, Mississippi from March 11, 1975 until March 15, 1975.

After the original explosion, which the plaintiff described as leaving him "broke all to pieces," Walters remembers being placed in the back seat of a car for the ride to the hospital. He passed out during this ride but vaguely remembers being in the emergency room; his next concrete memory was of leaving the hospital some time later.

The original treatment rendered to the plaintiff was to clean out his wound and pin his shattered femur back together, including a pin in his hip, but this caused so much pain that he was put in a body cast for 60 days. The pictures contained in Exhibit P-18 reflect the condition of the plaintiff's right leg during this period, and the obvious swelling and scarring endorse the narration of suffering that the plaintiff gave. After this cast was removed, Walters walked with crutches, but was plagued by constant drainage, swelling and infection in his right leg. Also during this period he was required to wear a heavy brace on his left leg because of the increased strain on that extremity.

Throughout this period Walters had achieved no meaningful recovery and was in constant physical pain and experienced mental depression. In August, 1971, he entered Forrest General Hospital in Hattiesburg, Mississippi for further treatment of the non-union of his shattered hip, and his hip was again pinned together. Part of the treatment at that time was to insert a plate in his thigh, which remained in for over a year. During this time the plaintiff was kept on a diet of buttermilk and cheese in an effort to combat infection, and he was required to drink a half gallon of buttermilk and eat a pound of cheese every day.

Subsequent to this hospitalization the plaintiff was in and out of the hospital for treatment of his injuries, which evidenced no sign of healing, and March, 1974 his right leg "exploded" and began to spew fluid. Walters was transported by ambulance to the emergency room of the University Medical Center in Jackson, Mississippi where he was treated by Dr. E. Frazier Ward.

The pictures contained in Exhibit P-18(A)-(T) vividly recount the agonizing extent of the plaintiff's injuries and the duration and continuation of the accompanying severe pain. In addition, the x-rays contained in Exhibit P-21 through P-27, when viewed in the light of Dr. Ward's explanation, leave no doubt of the severity of the trauma of the plaintiff's long road to his present state of recovery. The pictures and the testimony of Mr. and Mrs. Walters establish that from the date of

the injury until the present time, neither of the plaintiffs has had any of the normal enjoyments of life, and Mr. Walters has been in constant severe physical pain and mental depression from both his injuries and the subsequent loss of a limb.

Walters testified that since the date of the accident, he had not enjoyed himself at all, he can't play with his children since he is completely disabled, and his poor physical condition casts a pall over his entire personality. Prior to the accident he enjoyed hunting and being outdoors, but his injuries have ended this hobby or recreation. His wife has to dress him, and assist him in bathing since he cannot get in and out of the tub by himself. The accident destroyed all personal and sexual enjoyment that he previously normally had with his wife.

The plaintiff Mrs. Delphia Walters, who at the time of the trial was 51 years old, testified that she and her husband have two children, one of whom is 7 years old and the other 16. Prior to 1971 her husband was in good physical condition, working constantly and was a good husband and provider.

On the day of the accident she was at home when called and notified of the accident, and she immediately went to the hospital; at first she was not able to see her husband and saw him for the first time when he was being taken to surgery. Mrs. Walters doesn't think

her husband remembers much about the first period of hospitalization.

After Mr. Walters was sent home in April, 1971 following the initial operation, Mrs. Walters had to move him around on a stretcher and put him in a car and drive him around to prevent him from having a nervous breakdown. During this period Mr. Walters was in constant pain, and depressed because of the apparent failure of his injuries to improve and his inability to enjoy life. The plaintiff's wounds drained constantly, requiring frequent bandage changes, and emitted a foul odor. At times Mrs. Walters even dragged her husband from room to room in the house on a quilt to try to keep him from "going crazy" as a result of his pain and depression. The constant one surgery after another over the period of years has caused Mrs. Walters untold anxiety and mental anguish, and the strain of the whole experience has been almost more than she could bear. Her whole relationship with her husband, both personal and sexual, has been completely destroyed, and the accident has had an extremely unfortunate effect upon her husband's personality.

As noted above, the plaintiff was taken to Dr. E. Frazier Ward, an orthopedic surgeon in Jackson, Mississippi, on March 27, 1974, after being transported to the University of Mississippi Medical Center by ambulance. Dr. Ward described the general condition of the plaintiff on that date, and had no doubt that the conditions he observed were a result of the oil rig accident.

The doctor found the plaintiff's right thigh severely infected and swollen, a three inch shortening of the right leg, a non-union of the original fracture in the right hip and observed the plaintiff to be in considerable pain. Mr. Walter's right thigh from his knee to his crotch was tender with evidence of multiple operations, and his left knee was also swollen and obviously in very painful condition.

Dr. Ward immediately hospitalized the plaintiff and began to run tests and take x-rays, which revealed multiple screw holes in the right leg, a considerable amount of bone death, the failure of union of the pelvis, and in every detail substantiated the plaintiff's history of his injury. The left pelvis showed signs of having been used to provide a bone graft, which was described by Dr. Ward as an exceptionally painful operation.

According to Dr. Ward, the treatment was complicated by the fact that the plaintiff was 45 years old, had a history of 11 recent operations and pronounced shortening of the right leg. He discussed these factors with the plaintiff and recommended amputation of the right leg as the best treatment, and on April 2, 1974 Dr. Ward amputated the leg above the knee, while the plaintiff was under a general anesthesia. The incision revealed a large amount of scar tissue, along with dead bone, and at one point Dr. Ward cut into an abcess which was under such tremendous pressure that he had to step back from the operating table because fluid spurted therefrom. The condition of the plaintiff's

right leg after this operation is reflected by pictures comprising Exhibit P-18(Q)-(T).

On August 14, 1974, Mr. Walters was fitted with a permanent artificial leg, which may last anywhere from one to five years. However, if the plaintiff were to gain or lose weight, a new limb would be needed, so in Dr. Ward's opinion several of these limbs were needed.

An elastic brace was constructed for the plaintiff's left knee to decrease the stress caused by the loss of the opposite limb, which he now wears because it adds somewhat to the plaintiff's stability. However, the increased stress on the plaintiff's left knee caused by the loss of his right leg is a source of pain, and is aggravating an arthritic condition in the left knee.

In March, 1975 Walters was admitted to St. Dominic's Hospital in Jackson for treatment of chronic inflammation of his stump and tissue reaction to foreign material, and Dr. Ward performed an operation which corrected these problems, and also at that time repaired the amputation site.

The doctor described the problems the plaintiff had experienced with getting a suitable artificial limb, one which fit comfortably and didn't irritate the skin of the stump area. In addition, the plaintiff had suffered from "phantom limb," a sensation in which an amputee feels his missing limb is still there and feels pain in that area, and often tries to walk as he had before the amputa-

tion. Dr. Ward said the treatment employed to combat this pain was having some success, but that the trauma associated with this type of amputation was always more severe when there was a long period between the accident and the amputation.

Each artificial limb required by the plaintiff costs around $1000, and the left knee brace which the plaintiff has to wear will cost more than that.

There is no question in Dr. Ward's mind that all of the plaintiff's difficulties proximately resulted from the February 26, 1971 accident. Dr. Ward was also positive that the plaintiff was totally and permanently disabled from gainful employment, and that Walters will require future medical treatment both for his injuries and the severe mental depression that has resulted therefrom.

At the time of the accident in question, the plaintiff was 41 years old, had a fourth grade education, with a life expectancy of 31.3 years and a work-life expectancy of 22.3 years. He and his wife filed a joint federal income tax return for the years 1969 and 1970, which reflect Nevel Walters' earnings to have been $9,364.40 in 1969, and $9,881.32 in 1970. Since the time of the accident the plaintiff has been unable to perform any work. As outlined above, at the time of the accident Mr. Walters was working as an oil rig roughneck, and had been working in the oil fields approximately 26 years,

this being the only type of work that Mr. Walters is familiar with.

A preponderance of the evidence established that the defendant, Inexco, had the duty to exercise reasonable care to provide a reasonably safe place for Nevel Walters to work on this drilling rig, and that this duty involved providing reasonable and adequate safety devices on this drilling rig, and to properly install and test them when it was safe to do so. Most importantly, from the standpoint of this case, Inexco had the duty to install and test the kill line and to see that it was operational prior to the commencement of drilling. The evidence shows that the kill line was an essential safety feature of a drilling rig, especially in a high pressure area such as this oil field. There is no question that the kill line was not in place immediately prior to the accident, and this Court finds from the evidence in this regard and its assessment of the credibility of the witnesses that the kill line was never attached to the blowout prevention system before or after drilling was started. The failure of Inexco to discharge this duty constituted negligence, and this negligence was the sole proximate cause of the plaintiff's injury.

As stated above, Mr. Walters' injuries have been painful, disabling and permanent. In summary, he suffered multiple fractures, bruises and lacerations, notably a compound fracture of the right femur, a fracture of the pelvis and severe contusions about his pelvic area. He has endured approximately 11 different

periods of hospitalization, a severe infection of his right leg, and non-union of the bone, which continued over three years and resulted in a shortening of three inches of the bone, ultimately leading to amputation of the right leg at mid-thigh in April, 1974. The evidence is undisputed that he will continue to require extensive medical treatment in the future with replacement of his prosthesis from time to time. The average life of a prosthesis such as the plaintiff wears is from two to five years and thus will have to be replaced periodically. Mr. Walters has incurred medical expenses in the amount of $47,266.21 to date of trial. The amputation of the right leg has produced additional stress which has aggravated the condition of his left leg to the point that it is necessary that he wear a brace thereon, and the condition of the left leg will progressively worsen in the future. The plaintiff has and will continue to suffer severe pain, completely disabling him from all gainful employment, and making him dependent on others for attention to his daily personal needs. All of these damages are the direct and proximate result of the discussed negligence of the defendant Inexco. The plaintiff Nevel Walters is therefore entitled to recover from the defendant Inexco necessary and reasonable medical expenses incurred to the time of trial in the sum of $47,-266.21. In addition, in light of the undisputed proof that Nevel Walters will require future medical attention, he is entitled to recover from the defendant Inexco a sum to compensate him for future medical expenses in the amount of $10,000.00.

As noted above, the latest complete earnings records for Mr. Walters reflect that he earned $9,881.32 in 1970, and had it not been for the negligence of the defendant Inexco the plaintiff would have been able to continue to work and earn at a minimum this sum. Therefore the plaintiff's loss of earnings from February 26, 1971 to the date of this trial, May 3, 1978, or seven years and two months, has been $70,816.13, and he is entitled to recover this sum from the defendant Inexco. Furthermore, the plaintiff will suffer future loss of gross earnings during his work life expectancy of 22.3 years from the date of trial in the amount of $220,353.43, which discounted to its present value using a discount rate of 5% yields a figure of $131,-034.20.

The plaintiff Nevel Walters has suffered a horrendous amount of severe physical pain and mental anguish from the time of the accident until the date of the trial. This is the direct and proximate result of the negligence of the defendant Inexco, and therefore the plaintiff is entitled to recover from Inexco a reasonable sum to compensate him for these damages in the amount of $75,000.00. Mr. Walters will experience a large amount of physical pain and suffering and mental anguish in the future as a result of this accident. The severity of his injury has already been outlined above, along with the devastating effect it has had both physically and mentally on the plaintiff's life style and outlook on life. The extent and permanency of his injuries are pronounced, and they will prevent him from ever

having the enjoyment of life that he had prior to the accident. His ability to function as a husband and father has been severely, if not completely, destroyed, and the injury has resulted in a complete and adverse personality change in Nevel Walters. He will no longer be able to engage in his hobbies and will be severely handicapped in his enjoyment of life hereafter by the loss of his leg. The Court feels that this element of damage justifies an award of damages in the amount of $200,000.00, in light of the severity and trauma associated with the injury Nevel Walters suffered.

Turning to the claim of the plaintiff Mrs. Delphia Walters for loss of consortium, the Court finds that this plaintiff has suffered severe injury in this regard as a result of the injury to her husband. The ordeal Mrs. Walters has undergone because of the injury and the change it has made in their relationship has been outlined above. All of these damages are the result of the negligence of the defendant Inexco, and therefore Mrs. Walters will be entitled to recover an award of $50,000.00 from Inexco for the loss of her husband's companionship, consortium and services.

## Conclusions of Law

The plaintiff Nevel Walters was an employee of Loffland Brothers, an independent contractor performing work and services for Inexco Oil Co., operator of the well being drilled at the time of the injury. By virtue of

the hiring of an independent contractor, Inexco Oil Co. has certain duties imposed upon it by law. These duties have been succinctly stated in *Ingalls Shipbuilding Corp. v. McDougald*, 228 So.2d 365 (Miss. 1969), wherein it is stated:

> Ordinarily a prime contractor is not liable for the torts of an independent contractor or of the latter's servants committed in the performance of the contracted work. This is based on the theory that the contractee does not possess the power of controlling the person employed as to the details of the work. However, one who employs an independent contractor is nevertheless answerable for his own negligence. So an employer owes a duty to an independent contractor and the latter's employees to turn over to them a reasonably safe place to work or to give warning of danger.

228 So.2d at 367.

*See also, Mississippi Power Company v. Brooks*, 309 So.2d 863 (Miss. 1975).

In the case *sub judice*, Inexco has clearly violated its duty to provide the employees of Loffland a safe place to work by failing to exercise reasonable care to attach or attach and have tested the kill line prior to the commencement of drilling operations. This failure caused

Nevel Walters to be put in the position which caused his injury since because of Inexco's failure in this regard, Walters was trying to hook this kill line while the well was under pressure and in an unsafe condition for this work to be performed. The scenario before the Court would merit different interpretation if the Court were convinced that Inexco had initially fulfilled all of its responsibilities in regard to insuring the integrity of the safety systems at this well site. However the Court has previously found as a fact that Inexco did not do so, and it is the breach of this duty from which Inexco's liability must flow.

In addition, although abstract discussions of the principles of duty are necessary in determining the appropriate body of law to apply to the case under consideration, the nature of the danger involved in the negligence of the employer of the independent contractor is also significant. Unfortunately the search for oil and gas is an extremely dangerous operation with a tremendous potential for injury to the men involved in this occupation, especially to those workmen engaged in the actual drilling operation. The danger posed to the people working on drilling rigs by the nature of the work calls for care to be observed in safety matters. Failure to take adequate precautions can lead to tragic results, as happened in this case.

The duty of Inexco to make sure this kill line was properly attached, tested and in place prior to the commencement of drilling has been established, the Court

has found as a matter of fact that this was not done, and since this failure put the plaintiff Nevel Walters in the position of having to make the kill line connection while the drilling rig was under pressure and extremely hazardous, it constituted active negligence which was the sole proximate cause of the plaintiff's being injured.

The plaintiff Mrs. Delphia Walters suffered a substantial loss of "conjugal rights" as a direct proximate result of the injury caused by the negligence of Inexco, and therefore she is entitled to recover compensation therefor. *Tribble v. Gregory,* 288 So.2d 13 (Miss. 1974); *Miss. Code Ann.* 93-3-1 (1972).

The contract between Loffland and Inexco provides that Loffland will:

> Protect, indemnify, and save operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of contractor's employees . . . resulting from the willful or negligent acts or omissions of contractor and/or contractor's agents, employees, representatives or subcontractors.

As is apparent from the terms of this provision, this is not a commitment by Loffland to stand between Inexco and any loss occasioned by the negligence of Inexco.

Rather it is an agreement that Loffland must indemnify Inexco for any loss Inexco might suffer as a result of the negligence of Loffland or others connected with Loffland. Since the Court has found no negligence on the part of any Loffland personnel, the terms of this indemnity provision are not applicable to the facts of this case. The condition which caused the injury was caused by the negligence and neglect of its duty on the part of Inexco. Therefore the third party defendant, Loffland Brothers, is entitled to prevail in a third party action.

## Conclusion

The Court has found that Inexco was negligent in this action, and that Nevel Walters and his wife have suffered damages as the sole proximate result of this negligence. Mr. Walters is entitled to the following sums as damages: (1) medical expenses to the date of trial: $47,266.21; (2) future medical expenses: $10,000.00; (3) loss of earnings to date of trial: $70,816.13; (4) future loss of earnings: $131,034.20; (5) physical pain and mental anguish to date of trial: $75,000.00; (6) future physical pain and mental anguish, nature of extent of injury and efect on future enjoyment of life: $200,000.00, which when totaled entitled him to a Judgment in the amount of $534,116.54 against the defendant Inexco Oil Company. Mrs. Delphia Walters is entitled to a Judgment of $50,000.00 against the defendant Inexco Oil Company.

The plaintiffs will therefore submit Final Judgments to this Court, embodying the decision in this Memorandum Opinion and approved as to form by counsel for all parties, within the time and in the manner provided in the Local Rules of this Court.

Biloxi, Mississippi
April 26th, 1979

/s/ WALTER L. NIXON, JR.
UNITED STATES DISTRICT
JUDGE

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**APPENDIX 2**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

NEVEL A. WALTERS,
Plaintiff,

versus

INEXCO OIL COMPANY,
Defendant and
Third-Party Plaintiff,

versus

LOFFLAND BROTHERS COMPANY,
Third-Party Defendant.

CIVIL ACTION NO. H77-0021(N)

Filed: May 3, 1979

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*JUDGMENT*

This cause came on for trial before the Court without the intervention of a jury, Honorable Walter L. Nixon, Jr., presiding on May 1, 1978, on Declaration of the plaintiff, Answer and Third Party Complaint of the defendant, Inexco Oil Company, against Loffland Brothers Company, and Answer to the Third Party Defendant, all parties appearing in person and by counsel, and issue being joined and all proof and evidence in behalf of all of the parties as to liability and damages having been introduced, and the Court, having considered said matter and rendered its Memorandum Opinion, doth find that the Court has jurisdiction of the parties and subject matter; that the plaintiff is entitled to recover of and from the defendant, Inexco Oil Company, the following sums as damages: (1) medical expenses to date of trial: $47,266.21; (2) future medical expenses: $10,000.00; (3) loss of earnings to date of trial: $70,816.13; (4) future loss of earnings: $131,-034.20; (5) physical pain and mental anguish to date of trial: $75,000.00; (6) future physical pain and mental

anguish, nature and extent of injury and effect on future enjoyment of life: $200,000.00, or the total sum of $534,116.54; and that the third party defendant, Loffland Brothers Company, is entitled to prevail in the third party action, and that, therefore, the Third Party Complaint should be dismissed with prejudice at the cost of the Third Party Plaintiff.

THEREFORE, IT IS ORDERED by the Court that the plaintiff, NEVEL A. WALTERS, do have and recover of and from the defendant, INEXCO OIL COMPANY, a Delaware Corporation, the total sum of $534,116.54, with legal interest at the rate of eight (8%) per cent per annum from April 26, 1979, until paid, together with all costs to be taxed in said action, for all of which let execution issue according to law.

IT IS FURTHER ORDERED by the Court that the Defendant and Third Party Plaintiff, INEXCO OIL COMPANY, a Delaware Corporation, do have and recover nothing of the Third Party Defendant, Loffland Brothers Company, and that the Third Party Complaint be and the same is hereby dismissed with prejudice at the cost of the Third Party Plaintiff.

DATED at Biloxi, Mississippi, this, the 2nd day of May, A.D., 1979.

/s/ WALTER L. NIXON, JR.
UNITED STATES DISTRICT
JUDGE

## APPENDIX 2(a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

MRS. DELPHIA WALTERS,
Plaintiff,

versus

INEXCO OIL COMPANY,
Defendant and
Third-Party Plaintiff,

versus

LOFFLAND BROTHERS COMPANY,
Third-Party Defendant.

CIVIL ACTION NO. H77-0022(N)

Filed: May 3, 1979

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*JUDGMENT*

This cause came on for trial before the Court without the intervention of a jury, Honorable Walter L. Nixon, Jr., presiding on May 1, 1978, on Declaration of

the plaintiff, Answer and Third Party Complaint of the Defendant, Inexco Oil Company, against Loffland Brothers Company, and Answer of the Third Party Defendant, all parties appearing in person and by counsel, and issue being joined and all proof and evidence in behalf of all of the parties as to liability and damages having been introduced, and the Court, having considered said matter and rendered its Memorandum Opinion, doth find that the Court has jurisdiction of the parties and subject matter; that the plaintiff is entitled to recover of and from the defendant, Inexco Oil Company, the sum of $50,000.00; and that the third party defendant, Loffland Brothers Company, is entitled to prevail in the third party action, and that, therefore, the Third Party Complaint should be dismissed with prejudice at the cost of the Third Party Plaintiff.

THEREFORE, IT IS ORDERED by the Court that the plaintiff, MRS. DELPHIA WALTERS, do have and recover of and from the defendant, INEXCO OIL COMPANY, a Delaware Corporation, the sum of $50,-000.00, with legal interest at the rate of eight (8%) percent per annum from April 26, 1979, until paid, together with all costs to be taxed in said action, for all of which let execution issue according to law.

IT IS FURTHER ORDERED by the Court that the Defendant and Third Party Plaintiff, INEXCO OIL COMPANY, a Delaware Corporation, do have and recover nothing of the Third Party Defendant, Loffland

Brothers Company, and that the Third Party Complaint be and the same is hereby dismissed with prejudice at the cost of the Third Party Plaintiff.

DATED at Biloxi, Mississippi, this, the 2nd day of May, A.D., 1979.

/s/ WALTER L. NIXON, JR.
UNITED STATES DISTRICT
JUDGE

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**APPENDIX 3**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

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No. 79-2480

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NEVEL A. WALTERS and
MRS. DELPHIA WALTERS,
Plaintiffs-Appellees,

versus

INEXCO OIL COMPANY, a
Delaware Corporation,
Defendant-Third Party
Plaintiff-Appellant,

versus

LOFFLAND BROTHERS COMPANY,
a Corporation,
Third Party Defendant-
Appellee.

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Appeal from the United States District Court for the Southern District of Mississippi

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(NOVEMBER 5, 1980)

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Before INGRAHAM, GEE and TATE, Circuit Judges.

PER CURIAM: Affirmed on the basis of the Memorandum Opinion of the district court, No. H77-0021(N), *Nevel A. Walters v. Inexco Oil Co. v. Loffland Brothers Company*, consolidated with No. H77-0022(R), *Mrs. Delphia Walters v. Inexco Oil Co. v. Loffland Brothers Company*, dated April 26, 1979.

AFFIRMED.

500 Corrigan Tower
Dallas 1, Texas



# MASTER ROTARY DRILLING CONTRACT

Operator's Number_____

THIS AGREEMENT made and entered into by and between INEXCO OIL COMPANY

hereinafter called Operator, and LOFFLAND BROTHERS DRILLING CO.

hereinafter called Contractor



WITNESSETH: THAT,

WHEREAS, Operator is the owner, part owner, and/or Operator of certain properties on which it may from time to time desire to have a well or wells drilled and completed in search of oil or gas and,

WHEREAS, Contractor is engaged in the business of drilling and completing such wells and represents that it has adequate equipment in good working order and fully trained personnel capable of efficiently operating such equipment with which it desires to drill and complete such well or wells;

NOW, THEREFORE, the parties hereto, each in consideration of the promises and agreements of the other, mutually agree as follows:

## 1. MASTER CONTRACT:

1.1 If at any time during the term of this agreement Operator desires to have a well or wells drilled and completed by Contractor, Operator shall prepare and submit to Contractor a Bid Sheet and Drilling Order, hereinafter referred to as "Drilling Order." Such Drilling Order shall set forth the location, the depth to be drilled, specifications, and other conditions under which the well or wells are to be drilled and completed. If Contractor desires to drill and complete for Operator the well or wells set forth in the Drilling Order under the terms of this agreement and conditions and specifications set forth in the Drilling Order, Contractor shall complete the Drilling Order, setting forth the prices it proposes to charge for its services, and properly execute the Drilling Order in duplicate originals and return same to Operator. If Operator is satisfied with Contractor's proposals, Operator shall execute the Drilling Order and return one duplicate original to Contractor. When a Drilling Order has been agreed to and executed in the manner hereinabove provided, such Drilling Order shall become a part of this agreement and shall govern and control the drilling and completing of any well or wells by Contractor for Operator. Execution of this master contract agreement alone does not obligate Operator or Contractor to enter into any Drilling Order, one with the other.

1.2 If and when a Drilling Order has been executed by the parties hereto, Contractor agrees to commence operations for drilling of the well at the time and on the date set forth in Section 2 of the Drilling Order, and to drill and complete the well covered thereby for the production of oil and/or gas, at the location, in the manner, to the depth, and in accordance with all of the provisions and specifications of this agreement and the Drilling Order.

## 2. LABOR, EQUIPMENT, MATERIALS, SUPPLIES, AND SERVICES:

2.1 Contractor shall furnish, and use equipment discribed in Section 4 of each Drilling Order.

2.2 All labor, equipment, material, supplies and services necessary to the proper operation or maintenance of the drilling rig shall be furnished by Contractor. Additional material, equipment, special tools, supplies and services necessary or proper to the drilling and completion of the well shall be furnished at the drill site by the party designated in Section 5 of the Drilling Order. Should tools, materials, apparatus or services, other than those set forth herein or designated in the Drilling Order be necessary to the drilling or completion of the well, the cost of such tools, materials, apparatus or services and the manner in which they are to be furnished are to be agreed upon by the parties hereto.

2.3 Operator will stake the location of the well and furnish such labor, equipment, materials, supplies and services as are specifically set out in Section 5 of the Drilling Order. Should the Drilling Order specifically require that cement and other materials and services be furnished by Operator, such requirement shall not include cement, materials, supplies, and services necessary to plugging and abandonment occasioned by Contractor's negligence.

2.4 Should Contractor purchase for Operator at Operator's request any materials, supplies, or equipment which Operator is obligated to furnish under the terms of this agreement or any Drilling Order, Operator agrees to pay Contractor within 30 days after date of receipt of Contractor's invoice the actual cost of such materials, supplies, or equipment, less any cash discounts thereon to which Contractor may be entitled. Should Operator fail to pay such invoices within the time herein specified, Operator shall not be entitled to any such cash discounts and shall immediately pay Contractor the gross amount of such invoices. Contractor agrees to furnish Operator copies of suppliers', vendors', or third party invoices covering such materials, supplies, or equipment.

## 3. FOOTAGE RATE, DAY WORK RATE, STAND-BY RATE, BASIS OF DETERMINING AMOUNTS PAYABLE TO CONTRACTOR:

3.1 Subject to all of the other provisions hereof Operator agrees to pay Contractor for the work performed, services rendered, and the materials, equipment, and supplies furnished by Contractor, a sum computed as hereafter prescribed.

3.2 For work performed on a footage basis, Contractor shall be paid the rate agreed upon and specified in Section 13a of the Drilling Order multiplied by the linear footage of hole drilled. Such linear footage of hole drilled shall be determined in the manner specified in the Drilling Order.

3.3 For work performed on a day work basis, the day work rate per twenty-four (24) hour day shall be as agreed upon in Section 13b of the Drilling Order.

3.4 If it is necessary to shut down Contractor's rig for repairs while Contractor is performing work on a day work basis, Contractor shall be allowed compensation in the manner set out in Section 13d of the Drilling Order.

3.5 When Contractor's rig is shut down, although in readiness to resume operations but Contractor is awaiting orders of Operator or materials, services, or other items which Operator is obligated to furnish, Operator agrees to pay Contractor the stand-by rate specified in Section 13e of the Drilling Order.

3.6 If loss of circulation occurs while operations are being conducted on a footage basis, all operations until circulation is restored are to be conducted in accordance with the provisions set forth in Section 14 of the Drilling Order.

3.7 The term "day work" as used in this agreement refers to the work Contractor is to perform at a stipulated sum per day. Unless otherwise provided herein or in the Drilling Order, this shall include coring, reaming of cored hole, drill stem testing, electric logging, or similar operations, and all other work performed on order of Operator after the footage contract depth has been reached and until Operator releases Contractor's rig.

3.8 In determining the amount of day work time for which Contractor is to be compensated, it is agreed that such day work time shall begin when Contractor, at the request of Operator, suspends normal drilling operations being conducted on a footage basis and shall include the time required to restore the hole to the same drilling conditions which existed when operations on a footage basis were suspended. For day work comprising less than a twenty-four (24) hour day, Contractor shall be paid the proper fractional part of the amount specified for a twenty-four (24) hour day.

4. TIME OF PAYMENT:

4.1 Subject to provisions of Sections 12, 13, and 17 herein, [illegible]d conditioned upon full and complete compliance with all of the terms and conditions of this agreement and the Drilling Order, [illegible]erator agrees to make payments to Contractor as herein set out.

4.2 Payment for work performed on a footage basis shall [illegible] due and payable when Contractor completes performance of all footage work provided for by this contract and the acceptance [illegible]ereof by Operator. If Contractor performs any day work prior to reaching the footage contract depth, payment for such day work shall be due and payable at the close of each calendar month.

4.3 If the entire hole is drilled on a day work basis, payment shall be due and payable at the close of each calendar month for the number of days work performed at day work rates as set forth in Section 13b of the Drilling Order.

5. STOPPAGE OF WORK:

5.1 Operator shall have the right to direct the stoppage of work at any time prior to reaching the contract depth specified in the Drilling Order. Operator shall have the further right to require the well to be completed or abandoned at any depth or in any stratum within the contract depth. Immediately upon receipt of instructions from Operator, Contractor agrees to discontinue the drilling of the well and to abandon or complete the same as Operator may direct. If Contractor has not reached the per cent of specified footage contract depth as set out in Section 14 of the Drilling Order; and if the work theretofore performed was performed on a footage basis, and if the total footage drilled, when multiplied by the agreed footage rate, is insufficient to compensate Contractor for the cost of all services rendered and material and equipment furnished, Contractor may be compensated at the agreed day work rates or, upon mutual agreement by the parties hereto, for all cost and expense actually incurred plus the percentage agreed to in Section 14 of the Drilling Order to cover Contractor's overhead and profit.

6. OPTIONAL RIGHT OF OPERATOR IN [illegible]ENT OF DEFAULT BY CONTRACTOR:

6.1 In the event of unreasonably slow progress, carelessness, inattention, or incompetency on the part of Contractor in the performance of the work, Operator shall notify Contractor of its dissatisfaction. Contractor shall be afforded a reasonable period of time to correct or remedy the matters complained of. Should Contractor within the time afforded by Operator fail to correct or remedy the matters complained of to Operator's satisfaction, Operator shall have the right to take possession of the well, discontinue the drilling thereof, and dismantle or abandon same without any liability on its part for any portion of the contract price. If Operator so elects, it may take possession of the well and any or all of Contractor's tools, machinery and equipment at the well site and, through its own employees or some other contractor, drill such well to completion. If at the time of such notice there should be danger of a blowout or other well hazards be imminent, Operator shall have the right to immediately take over the operations and either discontinue, abandon, or continue drilling as above provided. If Operator takes over the well and Contractor's tools, machinery and equipment and completes the well, Operator's cost in completing the well, with no allowance for use of Contractor's tools, machinery and equipment, shall be deducted from the contract price which otherwise would have been payable to Contractor, and the balance, if any, paid to Contractor. Operator shall return tools, machinery and equipment to Contractor in as good condition as when taken over, normal wear and tear excepted. If operations are taken over by Operator as herein provided, all operations thereafter performed shall be at Operator's risk and the indemnity provisions hereof shall not apply. If Contractor carries insurance on Contractor's tools, machinery and equipment, such insurance shall be continued in effect during the period of such take-over and Operator shall reimburse Contractor for the cost of such insurance during such period. If Operator should so elect, Operator may secure such insurance through some other source including assumption of the risk as a self-insurer.

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7. CASING PROGRAM:

7.1 The casing program shall be as provided in Section 6 of the Drilling Order. The exact setting depth of each string of casing, the amount of cement, and the process to be used in cementing, shall be specified by the Operator at the time of each casing setting.

7.2 Contractor shall run and cement all strings of casing and shall be compensated therefor either at footage rates or at day work rates as set out in the Drilling Order. If casing is run and cemented at footage rates, Contractor shall at its expense condition the hole; run and cement the casing; wait on cement to harden (with prescribed waiting time to commence when plug hits bottom); drill the plug; wash the hole; and withdraw the bit. If casing is run and cemented at day work rates Contractor shall be paid for all time consumed in the process at applicable day work rates.

7.3 Contractor agrees to keep thread protectors on the casing until it is taken from the racks to be run into the hole and to grease the thread as it is made up with a suitable pipe lubricant. Contractor further agrees to preserve all protectors and after well is completed to break down all surplus casing, put protectors on same as it is broken down, and return such casing to the pipe racks at the rig.

8. DRILLING METHODS AND PRACTICES:

8.1 Contractor agrees to perform all work to be conducted by him under the terms of this agreement and the specifications and conditions set forth in the Drilling Order with due diligence and care in a good workmanlike manner and in accordance with good drilling practices.

8.2 Contractor agrees to maintain well control equipment in good operating condition at all times, checking it as prescribed in Section 4 of the Drilling Order, and shall use all reasonable means to control and prevent fires and blowou[illegible] to protect the hole, and to protect Operator's equipment.

8.3 Contractor agrees to maintain the mud program in a manner satisfactory to Operator. The drilling fluid shall be maintained in accordance with specifications set forth in Section 7 of the Drilling Order. The amounts of mud and mud conditioners to be furnished by either party shall be as specified in the drilling Order. If Operator furnishes mud and mud conditioners, Operator shall have supervision over the use of these materials.

8.4 Contractor agrees to keep a log of the well noting the nature, depth and thickness of formations encountered, and to save and label samples of such formations as Operator may request. Such log shall at all times be subject to inspection of Operator or its representative; and, upon completion or abandonment of the well to which it pertains, shall become the exclusive property of Operator. Contractor agrees to promptly notify Operator whenever any oil and/or gas-bearing formation is found. Operator shall be afforded sufficient time to examine said formation to determine whether or not the well should be completed in same, and for such time consumed Contractor shall be paid applicable day work rates.

8.5 Contractor agrees that every effort will be made to drill a straight hole and to make diligent effort to maintain its slope within the allowable limits specified in the Drilling Order. Contractor agrees to make slope tests as specified in Section 8 of the Drilling Order, with the cost of making such slope tests to be included in the footage rate if the well is being drilled on a footage basis. If the slope of the hole is found to be beyond the limits specified in the Drilling Order while work is being conducted on a footage basis and if requested by Operator, Contractor agrees at its cost to cement off, redrill, or correct the slope of the hole to the satisfaction of Operator. Operator reserves the right to require slope tests additional to those specified in the Drilling Order. In making such additional slope tests if it is found that the slope of the hole is beyond the prescribed limits set forth in the Drilling Order, the cost of such tests is to be borne by Contractor; and, if requested by Operator, Contractor agrees at its own cost to cement off, redrill or correct the slope of the hole to Operator's satisfaction. If the slope of the hole is found to be within the prescribed limits of the Drilling Order, rig time used to make the test shall be paid for at the applicable day work rate.

9. CORINGS AND CUTTINGS:

9.1 Contractor agrees to take cores as set out in Section 9 of the Drilling Order and, in so doing, to utilize a type of equipment specified therein. All coring shall be paid for at the applicable day work rate unless otherwise specified in the Drilling Order.

10. REPORTS TO BE FURNISHED BY CONTRACTOR:

10.1 Contractor shall keep and furnish to Operator a daily drilling report showing depth of the hole, formations penetrated, and such other data as required by Operator. Drilling report forms shall be as furnished or specified by the Operator. In the absence of specifications by operator the Standard API-AAODC Report Form shall be used.

10.2 Contractor shall report to Operator as soon as practicable all accidents or occurrences resulting in injuries to Contractor's employees or third parties, or damage to property of third parties, arising out of or during the course of operations of Contractor or of any subcontractors of Contractor, and, when requested, shall furnish Operator with a copy of all reports made by Contractor to Contractor's insurer or to others of such accidents and occurrences.

10.3 Delivery tickets covering any materials or supplies furnished by Operator or furnished by vendors for which Operator is obligated to reimburse Contractor, shall be turned in as received with the daily drilling report. The quantity, description, and condition of materials and supplies so furnished shall be verified and checked by Contractor, and such delivery tickets shall be properly certified as to receipt by Contractor's representative.

11. INSURANCE AND INDEMNITY: See Attached Insu nce Certificate.

11.1 At any and all times during the term of this agreemen Contractor agrees to carry insurance of the types and in minimum amounts as follows:

a. Workmen's Compensation insurance in full compliance with ll applicable State and Federal Laws and Regulations.

b. Employer's Liability insurance in the minimum limits of $1 ,000 or $_____ per accident covering injury or death to any employee which may be outside the scope of the Wor men's Compensation statute of the state in which the work is performed.

c. Comprehensive General Liability insurance with minimum limits of $100,000 or $_____ for injury or death of any one person and $200,000 or $_____ for any one accident and with minimum limits of $100,000 or $_____ for property damage.

d. In the event steam boilers are used, insurance against the hazard of boiler explosion covering property damage and injury to or death of third parties in minimum amount of $100,000 or $_____ unless such coverage is included in "c" above.

e. Automobile Liability insurance covering owned, non-owned, and hired automotive equipment with minimum limits of $50,000 or $_____ for injury to or death of any one person and $100,000 or $_____ for any one accident and $50,000 or $_____ property damage.

f. _____

_____

_____

g. _____

_____

_____

h. All such insurance shall be carried in a company or companies acceptable to Operator and shall be maintained in full force and effect during the term of this agreement, and shall not be canceled, altered, or amended without ten (10) days' prior written notice having first been furnished Operator. Contractor agrees to have its insurance carrier furnish Operator a certificate or certificates evidencing insurance coverage in accordance with above requirements and, when requested by Operator, to furnish certified copies of all such insurance policies.

11.2 In the event Contractor is a self-insurer and Operator has consented to Contractor being a self-insurer as to any one or more of the risks as to which coverage is herein required, evidence of such consent must be in writing and approved by a representative of Operator authorized to enter into such consent agreement.

11.3 Contractor agrees to protect, indemnify, and save Operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the willful or negligent acts or omissions of Contractor and/or Contractor's agents, employees, representatives, or subcontractors.

12. TAXES AND CLAIMS:

12.1 Contractor agrees to pay all taxes, licenses, and fees levied or assessed on Contractor in connection with or incident to the performance of this contract by any governmental agency for unemployment compensation insurance, old age benefits, social security, or any other taxes upon the wages of Contractor, its agents, employees, and representatives. Contractor agrees to require the same agreements and be liable for any breach of such agreements by any of its subcontractors.

12.2 Contractor agrees to reimburse Operator on demand for all such taxes or governmental charges, state or federal, which Operator may be required or deem it necessary to pay on account of employees of Contractor or its subcontractors. Contractor agrees to furnish Operator with the information required to enable it to make the necessary reports and to pay such taxes or charges. At its election, Operator is authorized to deduct all sums so paid for such taxes and governmental charges from such amounts as may be or become due to Contractor hereunder.

12.3 Contractor agrees to pay all claims for labor, material, services, and supplies furnished by Contractor hereunder and agrees to allow no lien or charge to be fixed upon the lease, the well, the land on which the well is to be drilled, or other property of Operator. Contractor agrees to indemnify, protect, and save Operator harmless from and against all such claims and liens. If Contractor shall fail or refuse to pay any claims or indebtedness incurred by Contractor in connection with the drilling of any well or wells hereunder, it is agreed that Operator shall have the right to pay any such claims or indebtedness out of any money due or to become due to Contractor hereunder. No assignment or transfer by Contractor of rights to monies due Contractor hereunder shall have any force or effect as far as Operator's rights are concerned until all such claims and indebtedness incurred by Contractor shall have been completely liquidated and discharged.

12.4 Before payments are made by Operator to Contractor, Operator may require Contractor to furnish proof that there are no unsatisfied claims for labor, materials, equipment, and supplies, or for injuries to persons or property not covered by insurance.

13. RESPONSIBILITY FOR LOSS OF OR DAMAGE TO THE EQUIPMENT OR THE HOLE:

13.1 Contractor's Surface Equipment: Contractor shall be liable at all times for damage to or destruction of Contractor's surface equipment including all drilling tools, machinery, and appliances for use above the surface, and for any other type of equipment, including in-hole equipment when such in-hole equipment is above the surface regardless of when or how such damage or destruction occurs. Operator shall be under no liability to reimburse Contractor for any such loss except loss or damage thereto caused by negligence or willful acts or omissions of Operator or Operator's agents, servants, or employees.

13.2 Contractor's In-Hole Equipment — Footage Basis: Contractor shall be liable at all times while work is being performed on a footage basis for damage to or destruction of Contractor's in-hole equipment, including drill pipe, drill collars, and tool joints. Operator shall be under no liability to reimburse Contractor for any such loss except loss or damage thereto caused by negligence or willful acts or omissions of Operator or Operator's agents, servants, or employees.

13.3 Contractor's In-Hole Equipment — Day Work Basis: Operator agrees to reimburse Contractor for Contractor's tools and equipment lost in the hole while Contractor is working on day rates, unless such loss is caused by Contractor's negligence. The basis of reimbursement shall be as specified in Section 14 of the Drilling Order.

13.4 Operator's equipment: All machinery, tools, material, and equipment furnished by Operator shall, at the completion or abandonment of the well, be returned to Operator in as good condition as when received by Contractor, ordinary wear and tear excepted. Contractor shall not be liable to Operator for any loss or damage to such equipment except that due to negligence of Contractor, its agents, representatives, employees, or subcontractors.

13.5 The Hole — Footage Basis: Should the hole for any cause attributable to Contractor's operations be lost or damaged while Contractor is engaged in the performance of work hereunder on a footage basis, all such loss or damage to the hole shall be borne by Contractor. If the hole is not in condition to be carried to the contract depth provided for in the Drilling Order, Contractor shall properly plug and abandon the hole and, if requested by Operator, commence a new hole without delay at Contractor's cost. The drilling of the new hole shall be conducted under the terms and conditions of this contract and Drilling Order in the same manner as though it were the hole that had been lost or damaged. In such case, Contractor shall not be entitled to any payment or compensation for expenditures made or incurred by Contractor or in connection with the abandoned hole except for day work earned in coring, testing, and logging said well or other day work for which Contractor would have been compensated had such hole not been lost and abandoned. If any casing or material furnished by Operator has been set or installed in the hole which was lost, and such casing or material cannot be recovered from the lost hole or, if recovered, is damaged beyond further use, and provided such loss or damage was the result of or caused by Contractor's negligence, Contractor shall replace all such casing or material furnished by Operator.

13.6 Notwithstanding the foregoing provisions of paragraph 13.5 hereof, if the hole is lost or damaged by reason of the failure of casing or equipment furnished by Operator or by reason of the failure of a cementing job such loss shall be borne by Operator, provided there was no negligence on the part of Contractor.

13.7 The Hole — Day Work Basis: In the event the hole is lost or damaged while Contractor is working on a day work basis or as the result of work performed on a day work basis, and provided there was no negligence on the part of Contractor, Operator shall be responsible for such loss or damage to the hole.

13.3 Inspection of Materials Furnished by Operator: Contractor shall examine all casing, equipment, machinery, tools, or other items furnished by Operator and if any defects are found therein sufficient to make the use of any such items unsuitable or unsafe, Contractor shall immediately notify Operator of such defect or defects and Operator shall at once replace the items so found defective. Should Contractor fail to make such examination or fail to report a defect in such item or items, Contractor shall be deemed to have assumed all risks and all liability for any mishap which may occur in the drilling of said well by reason of failure or defects in such casing, equipment, machinery, tools, or other items except for failure due to latent defects.

14. INDEPENDENT CONTRACTOR RELATIONSHIP:

14.1 Contractor shall be an independent contractor with respect to performance of all work hereunder and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of Operator in the performance of any work or service or any part thereof in any manner dealt with hereunder. Operator shall have no direction or control of Contractor or its employees and agents except in the results to be obtained. The work contemplated herein shall meet the approval of Operator and be subject to the general right of inspection herein provided for Operator to secure the satisfactory completion thereof.

14.2 The actual performance and superintendence of all work hereunder shall be by Contractor, but Operator or its representatives shall have unlimited access to the premises to determine whether work is being performed by Contractor in accordance with all of the provisions of this contract and the Drilling Order.

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15. LAWS, RULES AND REGULATIONS:

15.1 Contractor and Operator respectively agree to comply with all laws, rules and regulations, federal, state, and municipal, which are now or may become applicable to operations covered by this agreement or arising out of the performance of such operations.

16. FORCE MAJEURE:

16.1 Neither Operator nor Contractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of federal or state laws or the rules, regulations, or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the use of tools and equipment, or due, occasioned, or caused by strikes, action of the elements, or causes beyond the control of the parties affected hereby, and delays due to the above causes, or any of them, shall not be deemed to be a breach of or failure to perform under this agreement.

17. WITHHOLDING FUNDS:

17.1 Operator may withhold a percentage of the price agreed to be paid Contractor for the purpose, in the manner, and for the time provided in applicable laws of the area where the work is performed, said percentage to be ultimately released in accordance with such laws. The percentage, if any, to be retained shall be as set forth in Section 14 of the Drilling Order.

18. INGRESS AND EGRESS TO LOCATION:

18.1 Operator shall secure for Contractor rights of ingress and egress to the tract of land on which the well is to be drilled. Operator shall advise Contractor of any limitations or restrictions affecting ingress and egress, and Contractor shall abide by and shall have its employees, agents, or subcontractors abide by such limitations or restrictions. Should Contractor be denied free access to the location for any reason not within the control of Contractor, time lost by such denial shall be paid for at a reasonable rate in keeping with the stage of operations at the time.

19. AUDITS:

19.1 If any payment provided for hereunder is to be made on the basis of Contractor's costs, Operator shall have the right to audit Contractor's books and records relating to such costs. Contractor agrees to maintain such books and records for a period of two (2) years from the date such costs were incurred and to make such books and records available to Operator at any time or times within the two-year period.

20. PATENTS AND LICENSES:

20.1 In addition to the indemnifying provisions contained in paragraph 11 hereof, Contractor represents and warrants that the use or construction of any and all tools and equipment furnished by Contractor and used in the work provided for herein does not infringe on any license or patent which has been issued or applied for, and Contractor agrees to indemnify and hold Operator harmless from any and all claims, demands, and causes of action of every kind and character in favor of or made by any patentee, licensee, or claimant of any right or priority to any such tool or equipment, or the use or construction thereof, which may result from or arise out of the furnishing or use of any such tool or equipment by Contractor in connection with the work under this agreement.

21. CONFLICTS:

21.1 In the event there is a conflict between the provisions hereof and any papers or documents, other than the Bid Sheet and Drilling Order, which may have been executed or passed between the parties hereto in connection with the subject matter hereof, it is understood and agreed that the provisions hereof shall be controlling. If there be a conflict between the provisions hereof and a Bid Sheet and Drilling Order executed in connection herewith, it is understood and agreed that the provisions of the Bid Sheet and Drilling Order shall be controlling.

22. ASSIGNMENTS:

22.1 Contractor agrees not to sublet or assign any of the work required hereunder or in any Drilling Order, except for work normally performed by subcontractors, and not to assign any sums that may accrue to Contractor hereunder without written consent of Operator.

23. CANCELLATION:

23.1 This agreement may be canceled by either party at any time upon written notice to the other party, provided, however, should the drilling of a well or wells under any Drilling Order be commenced or in progress at the time of such notice; then, in such event, this agreement shall continue in effect until the well or wells have been completed and accepted by Operator.

WITNESS the signatures of the parties hereto in DUPLICATE ORIGINALS, this 17th day of December, A.D. 1970

WITNESSES:

Martha J. Tedman

Dolores Ollenhouse

INEXCO OIL COMPANY

Operator

Gulf Coast Division

By: Jeff J. Wood

Jeff J. Wood, Drilling Manager

WITNESSES:

James A. Vayner

Pamela S. Doyle

LOFFLAND BROTHERS COMPANY

Contractor

By: H. O. Heaton

(4)

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Division of Production
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Dallas, Texas 75201

P.6

Model Form 4h
First Edition
August, 1962

# BID SHEET AND DRILLING ORDER

Inexco Oil Company
1301 Americana Building
Houston, Texas 77002

To: Loffland Brothers Drilling Co.
P. O. Box 459
New Iberia, Louisiana 70560

Gentlemen:

In accordance with the provisions of Master Drilling Contract dated December 17, 19 70, heretofore executed by you bearing Operator's No. attached and the further provisions hereof, we solicit your bid for the drilling of the well hereafter described.

This bid form has been filled in by us to the extent necessary to disclose the manner in which we desire the well to be drilled. If you desire to submit a bid, it will be necessary that you complete this bid form in every respect and we request that you have such completed bid properly executed by you in duplicate originals, returned to our office at As soon as possible no later than _____ a.m. p.m. _____ 19____. If your bid is accepted by us, we will return one executed original to you.

If your bid as submitted is accepted by us, this instrument will become the Drilling Order and it together with the Master Drilling Contract above identified shall constitute the full and complete agreement between us covering the work described in this Drilling Order.

Very truly yours,

INEXCO OIL COMPANY

Gulf Coast Division
Operator

By: Jeff J. Wood
Jeff J. Wood, Drilling Manager

APPENDIX 5 43a

## 1. NAME AND LOCATION OF WELL:

Well Name and Number Masonite No. 2 Parish County Clarke State Mississippi
Field Name South Nancy Well location and land description Sec. 15, T1N, R14E
(to be staked).

## 2. COMMENCEMENT DATE:

Contractor agrees to commence actual drilling operations at the above location on or before _____, 19____, or, in the event Operator is to clear and grade location and furnish roadway or other ingress or egress facilities, within _____ days from the date of completion of the clearing and grading and construction of roadway, or such other ingress or egress facilities, whichever is the latter. after completing Masonite No. 1.

## 3. DEPTH:

3 (1) Subject to right of Operator to abandon the well or to have the well completed at a lesser depth, Contractor agrees to drill the well to a total contract depth of 15,000 feet. Contractor will drill the well on a footage contract basis (See Section 13a hereof) to - feet, or the top of the salt formation, or - feet of penetration into - formation, whichever is first reached. Drilling between the footage contract depth and total contract depth, if any, shall be at day work rates as specified in Section 13 hereof.

At Operator's request Contractor agrees to drill to a depth greater than total contract depth if in Contractor's opinion equipment at the well site is capable of such drilling. Rates for such drilling shall be negotiated by the parties hereto unless otherwise provided by Section 13 hereof.

## 4. RIG AND EQUIPMENT TO BE FURNISHED BY CONTRACTOR:

Contractor's Rig No. 328
Drawworks: As per attached inventory.
Engines — Number, Make & Models:
Slush Pumps — Make, Model & Size:
Auxiliary Pump & Power:
Derrick or Mast — Make, Size & Capacity:
Substructure — Height & Capacity:
Drill Pipe — Sizes & Amounts:
Drill Collars — Sizes & Numbers:

4 (1) Blow-out Preventers — Power Actuated: *Hydril, pipe and blind rams. (1)

| Casing String | BOP Size | API Series | No. and Style | BOP Pressure Tests Frequency | Psi |
|---|---|---|---|---|---|
| Surface | 10" | 900 | * | When Installed | 2000 |
| Intermediate | | | | | |
| | | | | | |
| Production | | | | | |
| | | | | | |

Operational checks of BOP Equipment shall be made as follows:
Work rams on every trip.

5. ADDITIONAL EQUIPMENT, MATERIAL, and/or SERVICES TO BE PROVIDED AT THE LOCATION BY THE PARTY DESIGNATED: O = Operator C = Contractor

| | | | |
|---|---|---|---|
| O | 1. Rights-of-way and roadway into location | C | 24. Casing tools for casing sizes specified Casing Crew and surface pipe only |
| O | 2. Clear and grade location | O | 25. Tubing tools |
| O | 3. Lay boardroads and turnarounds | O | 26. Bits, reamers, core heads and catchers, when on "day-work" |
| C | 4. Cellar and slush pits | O | 27. Stabilizers, drill pipe protectors and special tools when on "day-work" |
| C | 5. Steel mud and circulating tanks | C | 28. Drill pipe casing protectors when on footage |
| C | 6. Shale shaker, type | O | 29. Special fishing tool services and rental, when on "day-work" |
| O | 7. Degasser | O | 30. Mud logging service |
| C | 8. Desander | NA | 31. Automatic drilling time recorder |
| NA | 9. Clayjecter | O | 32. Storage facility for dry mud and chemicals sacked only. |
| C | 10. Fuel — gas, butane, diesel or crude | C | 33. Reel and mensuring line |
| C | 11. Water | C | 34. BOP remote control station and accumulator unit |
| C | 12. Fuel and water lines and rights-of-way to location | Surface Casing C | 35. Welding service for welding bottom joints of casing, guide shoe, float shoe, float collar and in connection with installing of well head equipment, if required |
| C | 13. Water storage at location capacity 250 bbls. | O | 36. Tubing, liners, screen, float collars, guide and float shoes and associated equipment |
| NA | 14. Coring reel with sufficient wire line | O | 37. Well head connections and all equipment to be installed in or on well or on the premises for use in connection with testing, completion and operation of well |
| NA | 15. Wire line core barrel and accessories | NA | 38. Canals, slips and keyways for inland water operations |
| NA | 16. Diamond core barrel, handling tools and accessories | NA | 39. Crew boats and fuel |
| NA | 17. Conventional core barrel (old type) | NA | 40. Pusher's boat and fuel |
| O | 18. Casing, essentially as specified herein | NA | 41. Marine transportation for other personnel |
| O | 19. Casing shoes, floats, centralizers and scratchers | O | 42. Refill and level slush pits |
| O | 20. Cement and cementing service for casing jobs | O | 43. Kelly joints, subs, elevators and slips for use with special drill pipe |
| O | 21. Electric logging and other wire line surveying services | | |
| O | 22. Drill stem formation testing service* | | |
| O | 23. Gun or jet perforating services | | |

| | |
|---|---|
| O | 44. Special strings of drill pipe and drill collars as follows: None anticipated. |
| C | 45. Move in and out, rig up and down, and all associated third party services. Operator will (in his judgment) allow Contractor a reasonable amount of time to move rig equipment off of location. All cost associated with stacking of rig off or on location will be Contractors. |
| | 46. |

6. CASING AND CEMENTING PROGRAM:

| Min. Hole Dia. | Casing OD In. | Proposed Setting Depth | Scratchers Number | Centralizers Number | Proposed Quantity Cement | WOC Hrs. | Footage or Day Work |
|---|---|---|---|---|---|---|---|
| 17½" | 10-3/4" | 3500'± | 0 | 3 | To Surface | 6 | Footage |
| 9-5/8" | 7" | TD | * | * | * | * | Daywork |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

*To be determined after logging.

7. MUD PROGRAM:

Operator agrees to furnish all mud conditioners (additives and chemicals) in excess of $ NA necessary for drilling and completing the well. Operator will arrange to purchase all necessary mud conditioning materials.

| From | To | Type Mud | Weight | Viscosity | % Oil | Water Loss |
|---|---|---|---|---|---|---|
| 0 | 3500 | Spud | 9.0+ | 40+ | 0 | NA |
| 3500 | TD | Water | 9.0-10.5 | 35-40 | 0 | 30-8 |
| | | | | | | |

8. STRAIGHT HOLE SPECIFICATIONS:

| Well Depth From | Well Depth To | Maximum Distance Between Surveys, Feet | Maximum Deviation from Vertical, Degrees | Maximum Change of Angle (or Over-All Angle) Between Any Two Surveys, Degrees* |
|---|---|---|---|---|
| 0 | T.D. | 500' | 5 deg. | 5 deg. |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Location of well bore at all depths feet shall be on lease

*Reduce proportionately for survey intervals less than 100 feet, but do not use intervals less than 30 feet.

The foregoing rate of change shall not be limiting in case of whipstocking approved by Operator.

9. PROPOSED CORING PROGRAM: Daywork

| Approx. Depth | Formation | Type Core | Size | Footage |
|---|---|---|---|---|
| NA | | | | |
| | | | | |

10. PROPOSED WIRE LINE SURVEYS: Daywork

| Type or Kind | From | To | Remarks: |
|---|---|---|---|
| Dual Induction Lateral | | | |
| Gamma Ray-Density | | | |
| Sidewall Neutron | | | |
| Sidewall Samples & Possible Dipmeter | | | |

11. PROPOSED FLUID PRODUCTION TESTS: Daywork

| Type or Kind | From | To | Zone to be tested: |
|---|---|---|---|
| DST | | | |
| | | | |
| | | | |
| | | | |

12. DESIGNATED REPRESENTATIVES:

| Operator | Contractor |
|---|---|
| Jeff J. Wood (Name) | Loffland Brothers Drilling Co. (Name) |
| 1301 Americana Building, Houston, Texas 77002 (Address) | P. O. Box 459, New Iberia, Louisiana 70560 (Address) |
| 224-8085 and 224-8818 (Day Telephone Number) | 318-364-4531 New Iberia, La. (Day Telephone Number) |
| 497-5332 (Night Telephone Number) | 601-428-0668 Laurel, Mississippi (Night Telephone Number) |

13. COMPENSATION TO BE PAID CONTRACTOR:

a. For work performed on a footage basis, the sum of $8.50 per foot for each linear foot of hole drilled. Such linear footage shall be determined by steel line measurement and such measurement shall be from top of rotary drive bushing to the total depth drilled less distance from ground level or water bottom to the top of the rotary drive bushing and less footage drilled while work is performed on a day work basis. If the cellar is furnished by Operator, ground level shall be construed to mean the bottom of such cellar.

b. For all work performed with a full crew on a day work basis, as defined in the contract, Contractor shall be paid a rate for each twenty-four (24) hour day as follows:

| Depth Intervals From | Depth Intervals To | With Drill Pipe | Without Drill Pipe | Using Operator's Pipe |
|---|---|---|---|---|
| 0 | 15,000 | $1925/Day | $1875/Day | NA |
| | | | | |
| | | | | |

$1200/Day standby if next location is not ready when rig is released from present location.

c. A full crew shall consist of 5 men. For each man crew is short, Contractor's day rate shall be reduced by the daily rate of pay for such man.

d. If it becomes necessary to shut down Contractor's rig for repairs while Contractor is performing work on a day work basis, Contractor shall be allowed compensation for such repairs at the appropriate day work rate commensurate with the stage of operations then in effect; i.e., with drill pipe or without drill pipe rate. The number of hours for which Contractor is to be compensated shall be limited as follows:

For any one repair job 4 hours.

Total hours per month 24

Total hours in the aggregate for the well 24

e. For stand-by time while waiting on orders or equipment to be furnished by Operator, a stand-by rate of $ 1650 per twenty-four (24) hour day with full crew or $ 1200 per twenty-four (24) hour day with watchman only.

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f. If the formation drilled to on a footage basis is unproductive and Operator elects to plug and abandon the hole, Contractor agrees to furnish NA hours of rig time without charge in lieu of rig time required to set casing included in footage rate.

11. SPECIAL AGREEMENTS:

... NA percent of contract consideration to be retained by Operator pending completion and acceptance of the work.

...If work is stopped by Operator as provided in Paragraph 5.1 of the contract, Contractor shall be paid in accordance with provisions of the contract and the rates herein agreed to unless stoppage occurs prior to Contractor's having reached - percent of contract depth. For purposes of this work stoppage provision, contract depth shall be deemed to be - feet; and the percentage to be allowed to cover Contractor's overhead and profit shall be - %.

...If loss of circulation occurs while normal drilling operations are in progress on a footage rate basis, Contractor shall notify Operator of such loss and shall use all reasonable means to restore the same, without compensation for the first 48 hour after the loss. If Operator concurs that such condition exists, operations to restore circulation after said 48 hour period shall be performed on a day-work basis until normal circulation is restored; provided, however, that Operator shall not be responsible for any fishing job or sticking of drill pipe, or other difficulty, which occurs during or prior to the said 48 hour period, unless said difficulty is a direct result of said loss of circulation, and Contractor shall bear all expenses in connection therewith without compensation until said difficulty is overcome. Subject to the foregoing, in the event, during the drilling of the well, the allowed time in the aggregate exceeds 96 hours, all operations thereafter performed by Contractor in attempting to restore circulation shall be on a day-work basis.

... Basis for payment to Contractor for equipment lost in hole while on day work rates (See Sec. 13.3 of contract) shall be as follows:

Drill pipe and associated subs - replacement price less 2%/Month from date of purchase
Drill collars and associated subs - replacement price less 1%/Month from date of purchase
Contractor to furnish invoices showing date of purchase
Other equipment will be replaced in kind by used equipment or 75% of new equipment cost.

(Note: Conditions may require clauses peculiar to certain geographical areas. When such conditions exist, needed special clauses may be inserted in this Section.)

In response to the above request, our bid for the drilling of the well hereinabove described is submitted as set forth above.

LOFFLAND BROTHERS COMPANY

Date: December 22, 1970

LOFFLAND BROTHERS COMPANY
Contractor

By: H. O. Heckert

H. O. Heckert, Vice President

The foregoing Bid and Drilling Order is hereby accepted and approved this 17th day of December, A.D. 19 70

INEXCO OIL COMPANY

Gulf Coast Division
Operator

By: Jeff J. Ward

Jeff J. Ward, Drilling Manager

## APPENDIX 6

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK

January 12, 1981

TO ALL PARTIES LISTED BELOW:

No: 79-2480 NEVEL A. WALTERS and MRS. DELPHIA WALTERS, -vs- INEXCO OIL CO., Etc., -vs- LOFFLAND BROTHERS CO.,
(CA-H77-0021(N) & CA-H77-0022(N))

Dear Counsel:

This is to advise that an order has this day been entered denying the petition for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the petition for rehearing en banc has also been denied.

See Rule 41, F.R.A.P., and Local Rule 17 for issuance and stay of the mandate.

PREVIOUS PAGE WAS BLANK

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

/s/ P. KELLER
Deputy Clerk

cc: Mr. M. M. Roberts
Mr. Leonard B. Melvin, Jr.
Mr. Bruce C. Aultman

---

## APPENDIX 7

### Section X

1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

# APPENDIX 8

AMEND 14

## CITIZENSHIP

### AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legisla-

ture thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the

United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

No. 80-1287

FEB 26 1981
ALEXANDER L. STEVAS
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
*Petitioner,*

vs.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, Plaintiffs, AND LOFFLAND BROTHERS, COMPANY, Third-Party Defendant,
*Respondents.*

## BRIEF OF LOFFLAND BROTHERS COMPANY, ONE OF THE RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DORRANCE AULTMAN
AULTMAN & AULTMAN
Post Office Drawer 750
Hattiesburg, Mississippi 39401
Telephone: (601)583-2671
*Attorney for Loffland Brothers Company, one of the Respondents*

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

## QUESTIONS PRESENTED

I

There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application.

II

There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari.

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# No. 80-1287

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

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INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
*Petitioner,*

VS.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, Plaintiffs, AND LOFFLAND BROTHERS, COMPANY, Third-Party Defendant,
*Respondents.*

---

## BRIEF OF LOFFLAND BROTHERS COMPANY, ONE OF THE RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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### STATEMENT OF THE CASE

This case originated as a result of an accident which occurred on February 26, 1971, involving Mr. Nevel A. Walters, one of the Plaintiffs, an employee of Loffland Brothers Company, one of the Respondents herein. The Plaintiff, Mr. Nevel A. Walters was working in Clarke County, Mississippi, in the employ of Loffland Brothers Company. The work was being done by Loffland Brothers Company for Inexco Oil Company, the Petitioner herein, who was the operator of the drilling operation be-

ing conducted at the time the accident occurred. Loffland Brothers Company, as contractor, was drilling the well for Inexco, the operator and owner of the lease. Following the accident, the Plaintiff, Nevel A. Walters, applied for and obtained Workmen's Compensation benefits under the Mississippi Workmen's Compensation Act, both compensation and medical benefits. The benefits were paid by Travelers Insurance Company, Loffland Brothers' Workmen's Compensation insurance company. On February 24, 1977, the Plaintiff, Nevel A. Walters and his wife, Mrs. Delphia Walters, filed separate suits against Inexco Oil Company seeking recovery in tort from Inexco Oil Company asserting negligence against Inexco Oil Company in failing to provide Mr. Walters with a safe place to work. (Appendix A-1 and A-6) This is the only theory of negligence asserted against the original Defendant.

Inexco denied claims of negligence asserted against it, and denied right of recovery sought by the Plaintiffs, Mr. and Mrs. Walters. Subsequent to that time, Inexco Oil Company obtained leave of the Court and filed a third-party complaint against Loffland Brothers Company under claimed indemnity asserted to exist in agreement of December 17, 1970, between Inexco Oil Company and Loffland Brothers Company. Loffland denied the right to recovery by Inexco Oil Company under any contract of indemnity, asserted affirmatively the statute of limitations, and the insulating feature of the Workmen's Compensation Act. Additionally, Loffland Brothers set forth in its pleading inapplicability of the indemnity clause of the contract to the facts before the Court, or, alternatively, the invalidity of any such agreement under Mississippi law. After the cases were consolidated, trial was had before United States District Judge Walter Nixon, Jr., resulting in the rendition of judgment in favor of the Plaintiffs as against Inexco Oil Company, the Petitioner, and in favor of the third-party defendant, Loffland Brothers Company.

It is to be noted that none of the pleadings claimed any negligence against Loffland Brothers Company. The sole basis for the lower court's decision against Inexco Oil Company was based upon Inexco Oil Company's failure to provide Nevel A. Walters, one of the Plaintiffs, with a safe place to work.

## REASONS FOR DENYING THE WRIT

### I

There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application.

The Petitioner, Inexco Oil Company, is asserting that the contract in question was meant to be a complete indemnity as between the parties, and that Loffland Brothers Company should "be required under this applicable law to stand between Inexco Oil Company and loss". The quoted part of the contract as set forth in the Petition for Writ of Certiorari provides in Paragraph 11.3 thereof as follows:

> "11.3 Contractor agrees to protect, indemnify, and save Operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the willful or negligent acts or omissions of Contractor and/or Contractor's agents, employees, representatives, or subcontractors."

The pleadings, and the proof, reflected that the Plaintiffs' theory of right of recovery against Inexco Oil Company was the failure of Inexco to furnish to Mr. Walters a safe place to work. This issue is between Inexco Oil Company and Mr. Walters, the Plaintiff, and Mrs. Walters, the remaining Plaintiff, an issue foreign to Loffland. The trial court found in its decision that the responsibility for furnishing a safe place to work rested with Inexco Oil Company, and that Loffland Brothers Company was in no way negligent, and no finding of any fact was made against Loffland Brothers Company which would give rise to or trigger the applicability of the agreement between the parties, even assuming that the same is valid, and is a binding indemnity agreement.

It is rather elementary that the third party pleading practice restricts and limits recovery to the theory set forth against the original Defendant, as against a third party defendant. In other words, the affirmative allegations contained in the original complaint (see Appendix A-1 and A-6), must afford basis for recovery against Loffland Brothers Company. As no facts were alleged or proved against Loffland Brothers Company on any theory of negligence, no reasons exist for the applicability of the agreement, regardless of the validity thereof.

It is submitted that under the findings of the trial court, which were affirmed by the United States Court of Appeals for the Fifth Circuit by adopting the decision of the trial court, it is patent that no liability could attach to Loffland Brothers Company because of the negligence of Inexco Oil Company, and, consequently, no application of the claimed indemnity agreement could arise under the findings of fact by the trial court as approved by the Court of Appeals as above stated.

II

There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari.

It is contended by the Petitioner that a conflict of decisions exists in the Fifth Circuit, and the Petitioner cites the cases of *Crosby* v. *General Tire & Rubber Co.* (5th Cir. 1976) 543 F.2d 1128 and the case of *Ramsey* v. *Georgia-Pacific Corp.*, (5th Cir. 1979) 597 F.2d 890, as authority for this proposition.

It is most respectfully submitted that no conflict exists between the findings of the United States Court of Appeals for the Fifth Circuit in the *Crosby* case, *supra.*, and the *Ramsey* case, *supra.*

As the findings of the trial court will reflect, and as affirmed by the Court of Appeals, Loffland Brothers Company was guilty of no negligence in causing that which occurred in this case. In the case of *Ramsey* v. *Georgia-Pacific Corp., supra.*, the court noted at the outset that the questions presented to the court were: "First, is it possible for the Plaintiff to recover a judgment against Georgia-Pacific for injuries that were caused in part by the actions of Walker Welding and in part by its own actions . . .".

The case was before the court on appeal from a ruling of the lower courts sustaining a motion for summary judgment.

In the *Ramsey* case, Georgia-Pacific had entered into a contract with Walker Welding and Machine Company whereby the latter was to do certain work for Georgia-Pacific, with Walker Welding and Machine Company being responsible for the entire operation, and to indemnify Georgia-Pacific. An employee of Walker Welding and Machine Company attached a chain to the end of a conveyor and to a lifting hook on a cherry picker crane provided by Georgia-Pacific and operated by Georgia-Pacific employee. The Georgia-Pacific employee lifted the conveyor at the instruction of Walker Welding employee injuring the plaintiff, an employee of Walker Welding. Suit was instituted against Georgia-Pacific Corp. on the theory that Georgia-Pacific had exclusive supervision and control of the work site and the installation operation and was negligent in failing to adequately support or use sufficient devices to lift the conveyor and prevent its fall and in failing to provide plaintiff with a safe place to work. Georgia-Pacific filed a third party complaint against Walker Welding and the lower court granted motion for summary judgment. In that case, the issue before the court was limited to whether or not Walker Welding would be responsible for damages Georgia-Pacific incurred because of Walker Welding's negligence. This was a limited issue before the court, and the court reversed and remanded the matter for a trial on its merits. The court indicated very clearly that it was not deciding

or predicting how the litigation might come out. The court said: "A full hearing may disclose that the agreement cannot be interpreted as we had suggested here".

The case of *Crosby* v. *General Tire & Rubber Co.* is not in variance with or in conflict with either the *Ramsey* case, in which the *Crosby* case was cited, nor the case on which the Petitioner is here seeking a Petition for Writ of Certiorari. The court in the *Crosby* case held that the indemnity agreement whereby General Tire & Rubber Co. sought the protection of an agreement to protect it against its own negligence was invalid under the statutes of the State of Mississippi. It was also contended that even if Mississippi law prohibited General Tire from insulating itself against its own negligence, that the statute did not prohibit recovery under the agreement for that portion of the settlement with Crosby which was attributable to the party giving the indemnity agreement. The court found that General Tire & Rubber Co.'s liability was that which gave rise to the settlement, and that it could not, therefore, shift the responsibility to the party giving the indemnity agreement.

As was found by the trial court and affirmed by the United States Court of Appeals, Loffland Brothers Company, one of the Respondents, was in no way negligent in the accident which gave rise to this litigation. Consequently, the contract about which complaint is sought to be made by the Petitioner is not applicable to the facts as found.

Consequently, there is no conflict of decisions of another court of appeals, nor of the Fifth Circuit, on the same matter, and the above matter does not involve any important state or territorial questions, or conflicts, nor does it involve any important questions of federal law which has not been decided, and, consequently, no basis exists for the granting of a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

## CONCLUSION

Loffland Brothers Company, one of the Respondents, requests the court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

DORRANCE AULTMAN
400 Professional Building
P. O. Drawer 750
Hattiesburg, Mississippi 39401
Attorney for Loffland
Brothers Company, one of
the Respondents

# APPENDIX

## APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

---

Civil Action
No. 7720216

---

Nevel A. Walters,
Plaintiff,

vs.

Inexco Oil Company, a Delaware Corporation,
Defendant.

## DECLARATION

Comes now NEVEL A. WALTERS, PLAINTIFF, and files this his Declaration for personal injuries and damages against INEXCO OIL COMPANY a Delaware Corporation, and for cause of action, would show unto the Court the following:

I.

That the plaintiff is an adult resident citizen of the Second Judicial District of Jones County, Mississippi.

II.

That the defendant, INEXCO OIL COMPANY, is a Delaware Corporation organized and existing under and by virtue of the laws of the State of Delaware qualified to do business and doing business in the State of Mississippi, and has appointed as its agent for service of process in the State of Mississippi, C. T. Corporation System, 118 North Congress Street, Jackson, Hinds County, Mississippi.

III.

That on and before the 26th day of February, A. D., 1971, the plaintiff herein was employed as a floorman with Loffland Brothers Company, an oil well drilling company, and was in the course of performing his duties and responsibilities of employment at Masonite Well No. 3 located in the Prairie Branch Field in Section 15, Township 1 North, Range 14 East in Clarke County, Mississippi; that Loffland Brothers Company was drilling said oil well for the defendant, Inexco Oil Company, on said location; that the oil well location was owned and operated by the defendant corporation, which was in complete charge of all operations at said well site; that it was the duty of the defendant corporation to promulgate safety regulations and precautions pertaining to the well site, its equipment and surrounding area; that because of the nature of the oil well drilling and prospect of production, it was extraordinarily dangerous and hazardous to persons working in and around the well site; that the corporate defendant assumed the duty of performing safety measures at the said well site; that it was the duty of the corporate defendant to specify safe materials and equipment and to prescribe safety regulations and precautions and to properly test and inspect said materials and equipment to insure the safety of those required to work in and about said well site.

IV.

That on said date and occasion, plaintiff was an employee of Loffland Brothers Company and was working as a floorman on Loffland Brothers' Rig No. 328, which was drilling said oil well for the defendant corporation; that said well site and its entire operations were under the control and supervision of the defendant and its agents and supervisors; that at the specific instance and request of the defendant, Inexco Oil Company, and its agents and supervisors, plaintiff had been directed and instructed to go down to ground level and to hook up the kill line from the mud line to the valves on the wellhead, at a time when

the pumps were pumping, and was in the process of preparing to connect a chicksan union to the mud line when, suddenly and without any warning whatsoever, a two (2) inch nipple between the well head and the well head valves failed, causing an explosion and causing the steel chicksan line to be blown into plaintiff's leg and knocking plaintiff down under the drilling line spool, seriously and painfully injuring plaintiff, as hereinafter described.

V.

Plaintiff charges and alleges that the corporate defendant, through its duty authorized agents and employees, was guilty of negligence which proximately caused the accident herein, said negligence consisting more particularly of the following:

A. Negligently failing to exercise reasonable care in the specification, design, inspection and testing of the low-pressure nipple between the well head and well head valve.

B. Negligently failing to properly install and test the kill line when the blowout preventer stack was originally installed and tested.

C. Negligently failing to properly install the kill line to the flow cross.

D. Negligently failing to properly install and test the kill line when the pumps were not pumping.

E. Negligently failing to give the plaintiff reasonable warning of the inherent dangers incident to being in close proximity to the low-pressure nipple between the well head and the well head valve as the kill line was being installed.

F. Negligently failing to use reasonable care in the installation and testing of the kill line.

G. Negligently failing to provide plaintiff a safe place in which to perform the duties of his employment.

H. Negligently failing to inspect and test the well head, well head valve and low-pressure nipple prior to killing a "kick".

I. Negligently failing to provide adequate supervision and direction.

J. Negligently failing to furnish, install and maintain proper and adequate safety devices.

VI.

That the defendant corporation and its agents and supervisors were, at the time, in exclusive control of the oil well site and all operations, and in particular, the well head, well head valve and kill line, and its design, installation and testing, and the defendant corporation, by and through its agents and supervisors, negligently caused and permitted the kill line to be improperly installed and tested, causing an explosion, at a time when plaintiff was a business invitee on the premises and in the course of his employment in and about the ground level area; that as a result of the explosion, plaintiff was severely injured; that this occurrence was one which ordinarily and in the normal course of events would not have happened in the ordinary course of events unless the defendants failed to use ordinary care in the design, installation and testing of said well head, well head valve and kill line; that the circumstances surrounding the plaintiff's injuries were such that the plaintiff was not then and is not now in a position to know or learn what specific conduct, what actions of omission to act brought about the explosion, but the defendant being in exlusive control of the kill line, well head and well head valve may reasonably be expected, under all the circumstances, to know and be able to explain the precise cause of the explosion, which caused plaintiff's injuries and damages.

VII.

Plaintiff charges that the negligence and carelessness of the defendant herein was so willful and wanton as to constitute

gross negligence, for which plaintiff is entitled to punitive damages.

VIII.

That as a direct and proximate result of the negligent actions of the defendant, and its agents and employees, in proximately causing the accident herein, plaintiff was seriously, painfully and permanently injured; that plaintiff sustained multiple bruises, abrasions and contusions with multiple fractures of his body, and in particular, his right leg and pelvis; that plaintiff's injuries to his right leg were so severe that he eventually lost his right leg by amputation; that plaintiff has endured excruciating pain and suffering, and will continue to suffer; that plaintiff has sustained injuries to his back and injuries to his left leg and knee, all of which have caused him to be totally disabled since this accident. Plaintiff has sustained a total loss of earning capacity and is totally and permanently disabled. Plaintiff has been made to and will continue to suffer extreme mental anguish and physical pain from his injuries. Plaintiff has incurred medical, hospital, doctor and drug bills to date in the approximate sum of $16,000.00, and will continue to incur such expenses in the future in an effort to alieviate his pain.

WHEREFORE, Plaintiff brings this his suit and demands judgment of and from the defendant corporation in the amount of $1,000,000.00, actual and punitive damages, plus all costs incurred herein.

Respectfully submitted,

Nevel A. Walters, Plaintiff

Leonard B. Melvin, Jr.

Of Counsel for Plaintiff

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Of Counsel for Plaintiff

## APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

---

Civil Action No._____

---

Mrs. Delphia Walters,
Plaintiff,

vs.

Inexco Oil Company,
a Delaware Corporation,
Defendant.

## DECLARATION

Comes now MRS. DELPHIA WALTERS, PLAINTIFF, and files this her Declaration for damages against INEXCO OIL COMPANY, a Delaware Corporation, and for cause of action, would show unto the Court the following:

I.

That the plaintiff is an adult resident citizen of the Second Judicial District of Jones County, Mississippi.

II.

That the defendant, INEXCO OIL COMPANY, is a Delaware Corporation organized and existing under and by virtue of the laws of the State of Delaware qualified to do business and doing business in the State of Mississippi, and has appointed as its agents for service of process in the State of Mississippi, C.T. Corporation System, 118 North Congress Street, Jackson, Hinds County, Mississippi.

III.

That on and before the 26th day of February, A.D., 1971, the plaintiff's husband, Nevel A. Walters, was employed as a floorman with Loffland Brothers Company, an oil well drilling company, and was in the course of performing his duties and responsibilities of employment at Masonite Well No. 3 located in the Prairie Branch Field in Section 15, Township 1 North, Range 14 East in Clarke County, Mississippi; that Loffland Brothers Company was drilling said oil well for the defendant, Inexco Oil Company, on said location; that the oil well location was owned and operated by the defendant corporation, which was in complete charge of all operations at said well site; that it was the duty of the defendant corporation to promulgate safety regulations and precautions pertaining to the well site, its equipment and surrounding area; that because of the nature of the oil well drilling and prospect of production, it was extraordinarily dangerous and hazardous to persons working in and around the well site; that the corporate defendant assumed the duty of performing safety measures at the said well site; that it was the duty of the corporate defendant to specify safe materials and equipment and to prescribe safety regulations and precautions and to properly test and inspect said materials and equipment to insure the safety of those required to work in and about said well site.

IV.

That on said date and occasion, plaintiff's husband was an employee of Loffland Brothers Company and was working as a floorman on Loffland Brothers' Rig No. 328, which was drilling said oil well for the defendant corporation; that said well site and its entire operations were under the control and supervision of the defendant and its agents and supervisors; that at the specific instance and request of the defendant, Inexco Oil Company, and its agents and supervisors, plaintiff's husband had been directed and instructed to go down to ground level and to hook up the kill line from the mud line to the valves on the well

head, at a time when the pumps were pumping, and was in the process of preparing to connect a chicksan union to the mud line when, suddenly and without any warning whatsoever, a two (2) inch nipple between the well head and the well head valves failed, causing an explosion and causing the steel chicksan line to be blown into plaintiff's husband's leg and knocking plaintiff's husband down under the drilling line spool, seriously and painfully injuring plaintiff's husband, as hereinafter described.

V.

Plaintiff charges and alleges that the corporate defendant, through its duly authorized agents and employees, was guilty of negligence which proximately caused the accident herein, said negligence consisting more particularly of the following:

A. Negligently failing to exercise reasonable care in the specification, design, inspection and testing of the low-pressure nipple between the well head and the well head valve.

B. Negligently failing to properly install and test the kill line when the blowout preventer stack was originally installed and tested.

C. Negligently failing to properly install the kill line to the flow cross.

D. Negligently failing to properly install and test the kill line when the pumps were not pumping.

E. Negligently failing to give the plaintiff's husband reasonable warning of the inherent dangers incident to being in close proximity to the low-pressure nipple between the well head and the well head valve as the kill line was being installed.

F. Negligently failing to use reasonable care in the installation and testing of the kill line.

G. Negligently failing to provide plaintiff's husband safe place in which to perform the duties of his employment.

H. Negligently failing to inspect and test the well head, well head valve and low-pressure nipple prior to killing a "kick".

I. Negligently failing to provide adequate supervision and direction.

J. Negligently failing to furnish, install and maintain proper and adequate safety devices.

VI.

That the defendant corporation and its agents and supervisors were, at the time, in exclusive control of the oil well site and all operations, and in particular, the well head, well head valve and kill line, and its design, installation and testing, and the defendant corporation, by and through its agents and supervisors, negligently caused and permitted the kill line to be improperly installed and tested, causing an explosion, at a time when plaintiff's husband was a business invitee on the premises and in the course of his employment in and about the ground level area; that as a result of the explosion, plaintiff's husband was severely injured; that this occurrence was one which ordinarily and in the normal course of events would not have happened in the ordinary course of events unless the defendants failed to use ordinary care in the design, installation and testing of said well head, well head valve and kill line; that the circumstances surrounding the plaintiff's husband's injuries were such that the plaintiff was not then and is not now in a position to know or learn what specific conduct, what actions of omission to act brought about the explosion, but the defendant being in exclusive control of the kill line, well head and well head valve may reasonably be expected, under all the circumstances, to know and be able to explain the precise cause of the explosion which caused plaintiff's husband's injuries and damages.

VII.

That as a direct and proximate result of the negligent actions of the defendant, and its agents and employees, in proximately causing the accident herein, plaintiff's husband was seriously, painfully and permanently injured; that plaintiff sustained multiple bruises, abrasions and contusions with multiple fractures of his body, and in particular, his right leg and pelvis; that plaintiff's husband's injuries to his right leg were so severe that he eventually lost his right leg by amputation; that plaintiff's husband has endured excruciating pain and suffering, and will continue to suffer; that plaintiff's husband has sustained injuries to his back and injuries to his left leg, all of which have caused him to be totally disabled since this accident. Plaintiff would show that plaintiff's husband sustained severe crushing injuries to his pelvis with lacerations of his right buttocks; that plaintiff's husband's injuries have required him to be hospitalized on numerous occasions and to undergo surgical procedures on numerous occasions and plaintiff's husband has suffered extreme pain, discomfort, and inconvenience; that plaintiff's husband has incurred large medical expenses in an effort to relieve the intense pain; that as a result of the injuries sustained, plaintiff's husband remains in a chronic state of anxiety and depression; that the injuries received by palintiff's husband were and are painful and he will continue to suffer and undergo physical and mental pain and anguish for the remainder of his life; that his loss of his right leg, the permanent injuries to his left leg, permanent scarring on the buttocks and back injury has not and will not return to their normal function and movement, and the use thereof has been permanently impaired, restricted and limited, and that the injuries are permanent, resulting in his being permanently and totally disabled to work and earn a living; that plaintiff's husband has a permanent disability and permanent limp because of the loss of his right leg.

VIII.

Plaintiff would further show unto the Court that prior to the injuries sustained by reasons of the defendant's negligence, as aforesaid, palintiff's husband was 32 years of age, was in good health, vivacious and fully capable of performing and actually did perform the usual duties of a husband and head of the household; that prior to said accident, plaintiff's husband was a pleasing, attentive and loving husband to the plaintiff, and as a consequence thereof, plaintiff received much comfort and happiness in his society and companionship, and plaintiff and her husband had a normal and active conjugal relationship; that by reason of said injuries, plaintiff's husband has been unable to perform the duties which he had theretofore performed for her; and that as a result of said injuries, plaintiff has been deprived of the companionship, company, consortium and services of her husband, and her comfort and happiness in his companionship have been greatly impaired; that plaintiff has been deprived of her normal and active conjugal relationship with her husband; that because of the injuries to her husband, plaintiff will continue to be permanently so deprived of the comfort, companionship, consortium and services usually and ordinarily provided by a husband in good health and of unimpaired vigor and strength.

IX.

That all of the losses, deprivations, and damages sustained by the plaintiff, as aforesaid, were a direct and proximate result of the accident set forth which was directly and proximately caused by the defendants' negligent acts.

WHEREFORE, Plaintiff sues the defendant, INEXCO OIL COMPANY, and demands judgment against the defendant in the sum of $500,000.00, together with all costs incurred herein.

Respectfully submitted,

Mrs. Delphia Walters, Plaintiff

By: Leonard B. Melvin, Jr.
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Of Counsel for Plaintiff

# No. 80-1287

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
*Petitioner,*

VS.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS,
Plaintiffs, AND LOFFLAND BROTHERS COMPANY, Third-Party
Defendant,
*Respondents.*

## BRIEF OF RESPONDENTS NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## QUESTIONS PRESENTED

Respondents, Nevel A. Walters and Mrs. Delphia Walters, respectfully submit the following:

1. There is no factual basis for the contention that Inexco could not be guilty of negligence because there was a contract for drilling the oil well by Loffland Brothers.

2. There exist no conflicts of decisions among the United States Court of Appeals, no conflicts contrary to the decisions of the Supreme Court of the State of Mississippi, no improper interpretation of law, nor does any other reason exist for granting the Petition for Writ of Certiorari.

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INEXCO OIL COMPANY,
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VS.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS,
Plaintiffs, AND LOFFLAND BROTHERS COMPANY, Third-Party
Defendant,
*Respondents.*

---

## BRIEF OF RESPONDENTS NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondents NEVEL A. WALTERS AND MRS. DELPHIA WALTERS pray that this Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, where Petitioner seeks to review a decision entered by the United States Court of Appeals for the Fifth Circuit on January 12, 1981.

### OPINIONS BELOW

These consolidated cases, being suits for personal injuries and damages sustained as a result of injuries sustained in an oil field

accident, were tried, by agreement, before United States District Judge Walter L. Nixon, Jr., in the United States District Court for the Southern District of Mississippi, without a jury.

The District Judge found that Inexco had the duty to exercise reasonable care to provide a reasonably safe place for Walters to work, and that this duty involved providing reasonable and adequate safety devices on the rig, and to properly install and test them when it was safe to do so (Pet. App. p. 24a). The District Court further found that Inexco had the duty to install and test the kill line and to see that it was operational prior to the commencement of drilling, and that the kill line was an essential safety feature of a drilling rig (Pet. App. p. 24a). The Court found from the evidence and its assessment of the credibility of the witnesses that the kill line was never attached to the blowout prevention system before or after drilling was started, and that the failure of Inexco to discharge this duty constituted negligence, and that this negligence was the sole proximate cause of the plaintiff's injury (Pet. App. p. 24a). Judgments were entered thereon.

The cases were appealed to the Fifth Circuit Court of Appeals, and after oral argument, the cases were affirmed on the basis of the opinion of the trial judge.

## JURISDICTION

Jurisdiction is attempted to be invoked under the right of the United States Supreme Court to review Orders and Actions of the District Court and Court of Appeals by Writ of Certiorari under Title 28, U.S.C., Section 1254(1), 2101(c) and (f).

## CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND ORDERS INVOLVED

Respondents respectfully submit that no Constitutional provisions are involved.

The Supreme Court under Rule 17 does not accept a review on a Writ of Certiorari except when there are special and important reasons therefor. In the cases at bar, there is no question of conflict between the Federal District Court or the Courts of Appeal with a decision of any other Federal Court, District, Court of Appeals, or the Mississippi Supreme Court. No federal question has been decided nor is there any federal decision in conflict with the District Court decision. The Federal Court of Appeals did not depart from the accepted usual course of judicial procedure nor is there any question of sanctioning such a departure by the Federal District Court. Lastly, there is no important question of federal law involved that needs settlement by this Court.

The issues involved in this case are questions of fact for determination by the trier of the facts and the decisions of law are questions of whether the facts in evidence are sufficient to justify the decision by the District Judge, as trier of the facts. There has been no issue raised as to any Constitutional question.

## STATEMENT OF CASE

The consolidated cases at bar are damage suits brought under the statutes of the State of Mississippi, in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, by Nevel A. Walters and his wife, Mrs. Delphia Walters, against Inexco Oil Company for personal injuries and damages, including loss of consortium by the wife.

The pleadings charge that Walters, an employee of Loffland Brothers Company, an independent contractor, was injured while in the course of his employment as a result of the negligence of Inexco Oil Company, the owner and operator, in failing to furnish Walters a safe place in which to perform his work.

The defendant, Inexco Oil Company, filed a third-party complaint against Loffland Brothers Company upon the basis of an indemnity provision in the contract between Loffland Brothers Company and Inexco Oil Company.

Issue was joined and by agreement of the parties, the matter was tried before the District judge, without a jury. After conclusion of the trial, the parties submitted proposed Findings of Fact and Conclusions of Law, and the District Court rendered its Memorandum Opinion finding that Inexco's failure to discharge its responsibility to see that the kill line was installed and tested on the subject drilling rig constituted negligence, which was the sole proximate cause of plaintiff's injury and returned verdicts in favor of the two plaintiffs against Inexco.

Inexco Oil Company was the operator of a well being drilled by contract with Loffland Brothers Company. Walters was a member of the drilling crew of Loffland Brothers Company, and had worked approximately two (2) weeks for Loffland.

On the date of the accident, drilling operations had progressed for some time and the casing work had been completed. There was ample evidence presented by lay witnesses, as well as expert witnesses, to the effect that in the drilling of an oil well, it is the responsibility of the operator (Inexco) to see that the casing program is done in a proper manner, which included the attachment of the blowout preventer and kill line and the proper testing by the operator (Inexco) to determine that the casing program is satisfactory. Even Inexco's representative and petroleum engineer, Boudreaux, testified that this was true, and admitted that if the kill line and preventers had been properly tested by Inexco that the explosion would not have occurred.

There was no evidence produced to show any negligence on the part of Loffland Brothers Company.

There was likewise ample evidence to support the awards in these cases, which is detailed in the Memorandum Opinion (Pet. App. 16a-27a).

Petitioner appealed, with supersedeas, said cases to the Fifth Circuit Court of Appeals, and after oral argument, the Fifth Circuit affirmed the cases on the basis of the Memorandum Opinion.

Petitioner thereafter filed two (2) petitions for Rehearing and Petitions for Rehearing En Banc, which were denied, pursuant to the Federal Rules.

## ARGUMENT

## REASONS FOR DENYING THE WRIT

### I.

**There Is No Factual Basis For The Contention Of The Petitioner That Inexco Could Not Be Guilty Of Negligence Because There Was A Contract For Drilling The Oil Well By Loffland Brothers**

Petitioner dwells a great deal over the fact that the Trial Court did not believe the testimony of Riley Dial. However, petitioner overlooks the fact that there were two co-employees of Walters, as well as Walters, who testified that the kill line had never been installed or tested. Likewise, the petitioner fails to consider the fact that Inexco furnished its drilling reports, which were prepared by Dial, and that the drilling reports failed to reflect the installation or testing of the kill line.

Montgomery, the expert of respondents, and Boudreaux, an officer of Inexco and petroleum engineer, testified that it was the responsibility of Inexco to supervise the casing program and to see that the kill line was installed and tested before authorizing drilling out of the casing.

Petitioner contends that the place was perfectly safe until it was made unsafe by an employee of Loffland Brothers, but in truth and fact, the place had never been safe from the moment that Inexco authorized Loffland to drill out of the casing.

Inexco had company representatives on the site from time to time, and Inexco created the unsafe place to work and permitted said unsafe condition to continue to exist until the accident and explosion, which resulted in the severe injuries to Walters.

The petitioner asserts that the contract between Inexco and Loffland completely relieved Inexco of all responsibility at the well site during the drilling operations, but a careful reading of the contract reveals that each party, the contractor and the

operator, retained certain responsibilities. Expert testimony as to the custom and practice in the oil field industry as to the respective responsibility of the contractor and the operator during drilling operations was presented as a further aid to the Trial Court.

Certainly, the contract contained an indemnification provision whereby the Contractor agrees to indemnify the operator of all claims arising out of injuries, etc., resulting from the *willful or negligent acts or omissions of contractor* and/or contractor's agents, employees, representatives, or sub-contractors, but these consolidated cases fail to reveal any negligent acts on the part of the contractor, Loffland.

Respondents submit that the findings of the trial Court contain an accurate description of the duties and responsibilities of the operator and contractor, and there was a failure on the part of Inexco to furnish Walters a safe place to work in that Inexco had the responsibility of installing, testing and inspecting the blowout preventers and related safety equipment, including the kill line, and that this should have been done before Inexco authorized Loffland to drill through the cement plus and out of the surface casing, which was the only safe time to perform this testing (Pet. App. 11a-12a; Pet. App. 24a).

Petitioner contends that the case of *Mississippi Power Co.* v. *Brooks,* (Miss. 1975), 309 So.2d 863, supports the theory that they seek in the cases at bar. But respondents respectfully disagree with this contention. The *Mississippi Power Co.* v. *Brooks* case, *supra,* is a case wherein Mississippi Power Company had contracted with Foster Wheeler Corporation to design and construct a boiler to be used in its generating unit. The boiler was to be built within the structural steel framework previously erected by Mississippi Power Company. The contract provided that Foster Wheeler Corporation agreed to design, construct and install a boiler with full and complete control over the mode and method of the work. Such is not the cir-

cumstances in these cases in that the contracts specifically provided that Inexco as the operator retained certain responsibilities, which included the responsibility for the casing program which involved the installation and testing of the kill line, which is the subject of this lawsuit.

The *Mississippi Power Co.* v. *Brooks* case, *supra,* affirms the statements set forth in *Ingalls Shipbuilding Corp.* v. *McDougald,* (Miss. 1969), 228 So.2d 365, and its enunciation of the law in cases involving prime contractor and an independent contractor to the effect that *one who employs an independent contractor is nevertheless answerable for its own negligence.* In the *Mississippi Power Co.* v. *Brooks* case, *supra,* the evidence shows that Mississippi Power Company exercised absolutely no control over the work, that the place where Brooks was killed was created and brought into existence by Foster Wheeler Corporation.

In the cases at bar, the operator, Inexco, retained certain responsibilities under the contract and the failure to discharge these responsibilities created and brought into existence the unsafe conditions at the well site which ultimately resulted in the severe injuries to the plaintiffs herein.

It is submitted that the District Court was imminently correct in its findings of fact and in holding Inexco answerable for its own negligence, under the authority of *Ingalls Shipbuilding Corp.* v. *McDougald, supra,* and *Miles* v. *Vicksburg Chemical Co.* (1979 5th Cir.) 588 F.2d 512.

II.

**There Exist No Conflicts Of Decisions Among The United States Court Of Appeals, No Conflicts Contrary To The Decisions Of The Supreme Court Of The State Of Mississippi, No Improper Interpretation Of Law, Nor Does Any Other Reason Exist For Granting The Petition For Writ Of Certiorari.**

Petitioner contends that the decision in the cases at bar conflicts with other decisions in the Fifth Circuit, and Petitioner cites the cases of *Crosby* v. *General Tire & Rubber Co.* (5th Cir. 1976), 543 F.2d 1128, and *Ramsey* v. *Georgia-Pacific Corp.*, (5th Cir. 1979), 597 F.2d 89, as being cases where the Court reached different conclusions on the same facts in interpretions of a contract.

It is most respectfully submitted that no conflict exists between the findings in the cases at bar, which were affirmed by the Fifth Circuit Court of Appeals, and the decisions reached in the *Crosby* case, *supra,* and the *Ramsey* case, *supra.*

The *Ramsey* case, *supra,* and the *Crosby* case, *supra,* both involved cases wherein there were questions of negligence on the part of the contractor, and in the cases at bar, the findings of the Trial Court clearly reflect that the sole and only negligence involved was the negligence of Inexco.

The *Ramsey* case, *supra,* involved a case brought by an employee of Walker, the independent contractor, against Georgia-Pacific, the principal. The principal brought third-party complaint against the contractor for indemnification. The District judge granted summary judgment dismissing the third-party complaint, and principal appealed. Facts of the case are quite different from the cases at bar, in that a full hearing had not been had in the matter. Therefore, only the pleadings were before the Fifth Circuit, and in interpreting the contract and the law of the State of Mississippi, the Fifth Circuit concluded that Georgia-Pacific, principal, had no cause of action under the indemnity agreement for any loss due *solely to its own negligence,* and that Georgia-Pacific would not be liable to the plaintiff for any damages absent some negligence on its part. Respondents respectfully submit that the *Ramsey* v. *Georgia-Pacific* case, *supra,* in no way supports the contention of Petitioner, but, in fact, reaffirms respondents' contention that, after a full hearing in the cases at bar, Inexco should be solely responsible for its own negligence.

The *Crosby* v. *General Tire* case, *supra,* is a case wherein the negligent party sought to recover under a written indemnity agreement, and the Fifth Circuit held that such contract was void because it purported to relieve the indemnitee of liability for its own negligence.

Respondents respectfully submit that the cases at bar, at the very beginning, were cases against Inexco seeking damages as the result of Inexco's negligence. Throughout the trial, this was the principle on which the evidence was presented, and respondents respectfully submit that respondents met the burden of proof and that the Memorandum Opinion (Pet. App. p. la-32a), accurately details the evidence presented, and the findings of fact and conclusions of law as reached by the trial judge, as the trier of these consolidated cases, which were affirmed by the Fifth Circuit, are imminently correct.

Respondents respectfully submit that there is no conflict of decisions of another court of appeals, nor of the Fifth Circuit, nor of the Mississippi Supreme Court on the same matter, and that these consolidated cases do not involve any important state or territorial questions, or conflicts, nor does it involve any important questions of federal law which has not been decided, and consequently, respondents respectfully submit that no basis exists for the granting of a Petition for Writ of Certiorari.

Consequently, respondents respectfully submit that the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

## CONCLUSION

Respondents, Nevel A. Walters and wife, Mrs. Delphia Walters, humbly submit that Inexco Oil Company received a fair and impartial trial lasting a period of three days, and received a fair and impartial review of said matter by the Fifth Circuit Court of Appeals, and therefore, have received constitutional due process and equal protection of the law. Therefore, the respondents respectfully request this Honorable Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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## CERTIFICATE

Three true copies of the foregoing Brief of Respondents Nevel A. Walters and Mrs. Delphia Walters in Opposition to Petition for Writ of Certiorari To the United States Court of Appeals for The Fifth Circuit have been mailed postage prepaid, to Honorable M. M. Roberts, Attorney for the Petitioner Inexco Oil Company, Post Office Box 870, Hattiesburg, Mississippi, 39401, and to Honorable Dorrance Aultman, Attorney for Respondent Loffland Brothers Company, Post Office Box 750, Hattiesburg, Mississippi, 39401, on this, the 26th day of February, A.D., 1981.

LEONARD B. MELVIN, JR.,

Attorney for the Respondents
Nevel A. Walters and Mrs.
Delphia Walters